

No. 14847

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United States  
Court of Appeals  
for the Ninth Circuit.

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GENERAL ACCIDENT, FIRE AND LIFE  
ASSURANCE CORP., LIMITED, a  
Corporation,

Appellant,

vs.

INDEPENDENT MILITARY AIR TRANS-  
PORT ASSOCIATION, a Corporation,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

DEC 27 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco 11, Calif.,

Attorneys for Plaintiff & Appellee.



District Court of the United States, Northern  
District of California, Southern Division

Civil No. 33441

INDEPENDENT MILITARY AIR TRANSPORT  
ASSOCIATION, a Corporation,

Plaintiff,

vs.

GENERAL ACCIDENT, FIRE AND LIFE AS-  
SURANCE CORPORATION, LIMITED, a  
Corporation,

Defendant.

### COMPLAINT

Plaintiff complains of defendant and for cause of  
action alleges:

#### I.

Plaintiff is a corporation organized and existing  
under the laws of the State of Delaware with its  
principal place of business in the District of Colum-  
bia, and defendant is a corporation organized under  
the laws of the Kingdom of Great Britain doing  
business in the State of California and having an  
office in said state in the City and County of San  
Francisco. The matter in controversy exceeds, ex-  
clusive of interest and costs, the sum of Three  
Thousand Dollars (\$3,000.00).

#### II.

On October 15, 1952, defendant issued to plaintiff  
its policy of insurance whereby defendant agreed  
with plaintiff, among other things, to indemnify

plaintiff for all loss, to a limit of \$50,000.00, sustained by plaintiff during the term of said policy:

“1. Through any fraudulent or dishonest act or acts, committed anywhere by any of the Employees acting alone or in collusion with others, including loss of Money and Securities and other property through any such act or acts of any of the Employees, and including that part of any inventory shortage which the Assured shall conclusively prove to have been caused by the fraud or dishonesty of any of the Employees, the amount of insurance on each of such Employees being the Limit of Liability applicable to this Insuring Agreement 1.”

By said policy defendant further agreed:

“If a loss is alleged to have been caused by the fraud or dishonesty of any one or more of the Employees and the Assured shall be unable to designate the specific Employee or Employees causing such loss, the Assured shall nevertheless have the benefit of this Insuring Agreement, provided that the evidence submitted reasonably (in case of inventory shortage, conclusively) establishes that the loss was in fact due to the fraud or dishonesty of one or more of the said Employees, and provided further that the aggregate liability of the Company for any such loss shall not exceed the Limit of Liability applicable to this Insuring Agreement 1.”

## III.

Plaintiff has paid to defendant all premiums required by the terms of said policy and has kept and performed all terms and conditions thereof on its part to be kept and performed, and said policy was in full force and effect during all times stated herein and particularly on November 27th and 28th, 1953.

## IV.

On or about November 27th or 28th, 1953, plaintiff suffered a loss of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven Cents (\$15,728.57) in United States currency and coin from a cash box in a drawer of a desk of an office occupied and used by plaintiff and its employes at the Oakland Municipal Airport in the City of Oakland, County of Alameda, State of California, being one of the premises specifically covered by said policy. Said loss is alleged to have been caused by the fraud and dishonesty of one or more of plaintiff's employes and plaintiff is unable to designate the specific employe or employes causing such loss. Said loss and the facts and circumstances surrounding the same were investigated by the Police Department of the City of Oakland, and the Police Department thereafter reported in writing to plaintiff that the loss was due to theft committed by one of the employes of plaintiff or by some unknown person under the supervision and control of an employe.

## V.

Following said loss and on or about December 1, 1953, plaintiff gave to the defendant written notice thereof and thereafter and on or about December 28, 1953, plaintiff delivered to defendant schedules itemizing said loss and on or about the same time submitted to defendant a true copy of the report of the Oakland Police Department with respect to the cause of said loss. Thereafter, and within the time prescribed by the terms and conditions of said policy of insurance, plaintiff prepared and filed with defendant affirmative, itemized proof of loss duly sworn to, copy of which marked Exhibit B is attached to this complaint and by this reference made a part hereof.

## VI.

Defendant wrongfully and without cause has disclaimed responsibility to plaintiff under said policy of insurance and has failed and refused and still fails and refuses to pay said claim.

Wherefore, plaintiff prays judgment against defendant herein for the sum of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven Cents (\$15,728.57) together with interest thereon at the rate of Six Per Cent (6%) per annum until paid, and for such other relief as may be meet and proper in the premises.

/s/ RICHARD ERNST,

/s/ R. L. MILLER,

Attorneys for Plaintiff.



PROOF OF LOSS

General Accident, Fire and Life Assurance  
Corporation, Limited,  
155 Sansome Street,  
San Francisco 4, California.

Re: Your Comprehensive Dishonesty, Disappearance and Destruction Policy-Form B,  
No. D.D.D. 5494 Issued to Independent  
Military Air Transport Association under  
date of October 15, 1952.

By your policy of insurance above described you insured the undersigned Independent Military Air Transport Association, whose principal office is 1025 Connecticut Avenue N.W., Washington, D. C., against loss caused by the fraud or dishonesty of any one or more of the employees of the undersigned to the policy limit of \$50,000. On or about November 27th or 28th, 1953, at the Oakland Airport, in the County of Alameda, State of California, the undersigned suffered a loss of United States currency and coin in the amount of \$15,728.57, which to the best of its knowledge and belief, was caused by the dishonesty of one or more of its employees.

Attached hereto and made a part of this Proof of Loss are schedules marked Appendix A itemizing said loss.

Also attached hereto marked Appendix B and made a part hereof is a copy of a letter dated December 18, 1953, addressed to the undersigned by

the Chief of Police of the City of Oakland, County of Alameda, State of California, advising the undersigned of the investigation made by said police of the facts and circumstances surrounding said loss, and advising the undersigned that in the opinion of the police the loss was due to a theft committed by one of the employes of the undersigned or by some unknown person under the supervision and control of an employe. This report of the Oakland police is submitted as evidence reasonably establishing that the loss was in fact due to the fraud or dishonesty of one or more of the employes of the undersigned as required by the terms of said policy. The detailed reports of the police investigation forming the basis of the attached letter are available to you for your examination in the files of the Police Department in the City of Oakland, County of Alameda, State of California.

Written notice of said loss was given to you on or about December 1, 1953, and thereafter you were furnished with the itemized schedules attached hereto as Appendix A and a copy of Appendix B together with a written claim.

The undersigned hereby makes claim upon you under the terms of said policy in the sum of \$15,728.57 in full and final settlement of the loss referred to.

The undersigned certifies that said loss was not caused by design or procurement on its part; nothing has been done by or with its privity or consent, to violate the conditions of the policy, or render it void. Said property, to wit, the sum of \$15,728.57

in United States currency and coin, was at the time of said loss solely the property of the undersigned and none of said property has been saved, recovered or in any manner concealed by the undersigned or by anyone acting in privity with it.

Any other information within our possession or under our control that you may require will be furnished on call and considered a part of this proof.

Dated at Washington, D. C., this 24th day of February, 1954.

INDEPENDENT MILITARY AIR TRANSPORT  
ASSOCIATION, a Corporation,

By /s/ JOSEPH A. REILLY.

United States of America,  
District of Columbia—ss.

On the day and date above written before me Marian W. Flory, a Notary Public, personally appeared Joseph A. Reilly, known to me to be the Treasurer of Independent Military Air Transport Association, a corporation, and the individual who signed the foregoing statements in the name of and on behalf of said corporation, and he made solemn oath to the truth of the same and that no material fact is withheld of which said insurers should be advised.

[Seal]      /s/ MARIAN W. FLORY,  
Notary Public.

Commission expires July 14, 1955.

## APPENDIX A

## Independent Military Air Transport Association

## Carrier Gross Revenues

## Four Flights from Oakland, California

November 25, 1953

	Fares	Revenue Tax	Total
Coastal Cargo Co., Inc. N 1683M			
42 IMATA PAX, OAK-LGA .....	\$ 4,158.00	\$ 623.70	\$ 4,781.70
==	==	==	==
Transocean Air Lines N 68967			
16 IMATA PAX, OAK-MEM .....	\$ 1,229.76	\$ 184.48	\$ 1,414.24
13 IMATA PAX, OAK-ATL .....	1,285.44	192.79	1,478.23
13 IMATA PAX, OAK-DCA .....	1,352.00	202.80	1,554.80
—	—	—	—
42 IMATA PAX .....	\$ 3,867.20	\$ 580.07	\$ 4,447.27
==	==	==	==
Capitol Airways, Inc. N 1647M			
9 IMATA PAX, OAK-MKC .....	\$ 675.00	\$ 101.25	\$ 776.25

39 IMATA PAX, OAK-CHI .....	\$ 2,925.00	\$ 438.75	\$ 3,363.75
48 IMATA PAX .....	\$ 3,600.00	\$ 540.00	\$ 4,140.00
2 Agency PAC, OAK-CHI .....	150.00	22.50	172.50
50 PAX .....	\$ 3,750.00	\$ 562.50	\$ 4,312.50
Capitol Airways, Inc. N 1308V			
12 IMATA PAX, OAK-CHI .....	\$ 900.00	\$ 135.00	\$ 1,035.00
33 IMATA PAX, OAK-LGA .....	3,267.00	490.05	3,757.05
45 IMATA PAX .....	\$ 4,167.00	\$ 625.05	\$ 4,792.05
3 Agency PAX, OAK-CHI .....	\$ 225.00	\$ 33.75	\$ 258.75
2 Agency PAX, OAK-IGA .....	198.00	29.70	227.70
5 Agency PAX .....	\$ 423.00	\$ 63.45	\$ 486.45
50 PAX .....	\$ 4,590.00	\$ 688.50	\$ 5,278.50

## Independent Military Air Transport Association

Summary Accounting of All Revenues  
Four Flights from Oakland, California  
November 25, 1953

## Total Accountable Revenue

## Gross Revenues for Fares and Taxes:

Coastal Cargo Co., Inc. N 1683M .....	\$ 4,781.70
Transocean Air Lines N 68967 .....	4,447.27
Capitol Airways, Inc. N 1647M .....	4,312.50
Capitol Airways, Inc. N 1308V .....	5,278.50
	<hr/>
	\$18,819.97

## Change Funds .....

200.00  
20.00  
20.00

PPR Refunded at Treasure Island from Change Fund #10659 .....

PPR Outstanding 11/27/53 #10583 PAX Cleary, K.H. ....

## Total Revenue .....

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\$19,059.97

## Total Revenue Accounting

Agency Check sent directly to Capitol Airways .....	150.00
Agency Commission Deducted .....	22.50
	<hr/>
Agency Check Sent to IMATA, endorsed by Capitol Airways .....	375.00
IMATA Receivable from Agency .....	48.00
Agency Commission Deducted .....	63.45
	<hr/>
	486.45

IMATA Cash Report, Treasure Island, 11-25 .....		\$ 1,730.84
IMATA Cash Report, Parks AFB, 11-25 .....		172.50
IMATA Cash Report, San Diego, 11-24 .....		445.22
Change Funds on Hand 12/3/53:		
Treasure Island .....	\$ 5.00	
Fort Ord .....	100.00	
Parks AFB .....	75.00	
PPR Refunded: Change Fund, Treasure Island #10659 .....	20.00	200.00
<hr/>		
Receivable from PAX Gibson, Ticket #4474,		
Tariff Undercharge .....		10.00
Receivable from PAX Bowes, Ticket #4421,		
Tariff Undercharge .....		31.21
Payable to PAX Clemens, Ticket #4522,		
Refund Underpayment .....		(27.60)
Part-time Labor Expense .....		38.00
Receivable from 6 PAX for Shuttles, San to Oak. ....		71.76
Cash Report Shortage, San Diego 11-24 .....		.52
Cash Loss at Oakland, Calif. ....		15,728.57
<hr/>		
Total Accounting .....		\$19,059.97
<hr/>		



## Independent Military Air Transport Association.

Payments to Carriers  
Four Flights from Oakland, California  
November 25, 1953

Coastal Cargo Co., Inc. N 1683M

Total IMATA Revenues .....	\$ 4,781.70
Less: IMATA Commission .....	623.70

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\$ 4,158.00

IMATA Check No. 1373, Bank of America .....

Transocean Air Lines N 68967

Total IMATA Revenues .....	\$ 4,447.27
Less: IMATA Commission .....	580.07

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\$ 3,867.20

IMATA Check No. 1378, Bank of America .....

Capitol Airways, Inc. N 1647M

Total IMATA Revenues .....	\$ 4,140.00
Total Agency Revenues .....	172.50

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\$ 4,312.50



Less: IMATA Commission .....	\$ 540.00		
Agency Commission .....	22.50	\$ 562.50	\$ 3,750.00
Payment of Agency to Carrier .....			150.00
IMATA Check No. 2928, Liberty Bank .....			\$ 3,600.00
Capitol Airways, Inc. N 1308V			
Total IMATA Revenues .....	\$ 4,792.05		
Total Agency Revenues .....	486.45	\$ 5,278.50	
Less: IMATA Commission .....	625.05		
Agency Commission .....	63.45	688.50	
IMATA Check No. 2977, Liberty Bank .....			\$ 4,590.00
Agency Check Paid to IMATA at DCA, via Capitol Airways' endorsement to IMATA .....			375.00
IMATA, DCA, Billing to Agency for shortage in Agency check, supported by Agency I. O. U. ....			48.00
IMATA Collections from Agency at DCA .....			\$ 423.00



	(1) Total Fares	Total Tax	Total Cash
port			
1	\$ 2,274.76	\$ 341.21	\$ 2,615.97
2	2,377.06	356.57	2,702.42
3	2,666.62	399.98	3,056.60
4	2,484.00	372.60	2,884.20
5	2,290.88	343.63	2,634.51
6	2,604.00	390.60	2,994.60
7			
"			
"	494.88	74.23	571.11

Tr	\$15,192.20	\$2,278.82	\$17,459.41
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port

1

"	450.00	67.50	445.22
---	--------	-------	--------

port

1

	150.00	22.50	172.50
--	--------	-------	--------

s	\$15,792.20	\$2,368.82	\$18,077.13
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Ac

Tot

Bal

S

Baines .....	\$ 3,867.20		
--------------	-------------	--	--

I .....	4,158.00		
---------	----------	--	--

Bal .....	7,767.00	\$15,792.20	
-----------	----------	-------------	--

(

.....		2,368.82	
-------	--	----------	--

Tot .....		67.60	
-----------	--	-------	--

.....		\$18,228.62	
-------	--	-------------	--

es .....	\$ 38.52		
----------	----------	--	--

bles .....	112.97	151.49	
------------	--------	--------	--

sh .....		\$18,077.13	
----------	--	-------------	--

1) Capito



APPENDIX B

City of Oakland  
California Police Department  
Address All Correspondence to  
Lester J. Divine, Chief of Police

In Reply Refer to  
Insp. A. Mallon  
Insp. Gustavson  
Grand Theft Detail  
N-51826

December 18, 1953.

Ramsay D. Potts, Jr.,  
Independent Military,  
Air Transport Assoc.,  
1025 Connecticut Ave.,  
Washington, D. C.

Dear Sir:

In reply to your letter of 15 December 53 the following is a resume of the investigation by our Grand Theft Detail.

There were no signs of illegal entry into the office, either through the front door or the back door. A window had been left open, however the area surrounding it was observed by our technician, Officer Lucas. The presence of cobwebs at the opening of this window and undisturbed dust gathered at the landing where a person would have had to step left no doubt that there had been no entry made at this point.

The rear door has both a lock and a bolt, and although the lock could have been easily slipped it would have been impossible to tamper with the bolt. As this door was still bolted on Saturday morning (according to the employees) there could not have been an entry made through this door.

The front door has one lock on it and according to Inspector Gustavson's observation it would have been impossible to slip this lock. The construction of this door and also the numerous coats of paint which have been applied to it prevented any entry.

It was then the conclusion of this detail that the only means of entry was by the front door and by the use of a key.

Our investigation revealed only five keys available. Four being in the hands of the employees and one in the possession of the janitor.

Lieutenant Waters, Inspectors Gustavson and Mallon and Criminologist Cooper checked the desk of Mr. Scott and found absolutely no evidence of a forced entry. Technician Lucas found no prints on either the desk of Mr. Scott or the cash box. Also there was no evidence of tampering with this cash box.

The cash box in question was taken to the Police Department and it was found to be locked accidentally. Lieut. Waters and others tried for over an hour to open this box by using every type of picklocks to no avail. Due to the fact that the box had not been tampered with; the further fact that

after it had been opened and the money taken it was again locked, it is conclusive that a key had been used to open this box. A thorough check both inside and outside by our Criminologist, Robert Cooper, failed to reveal any identifying fingerprints.

It is the conclusion of this Detail that this theft was committed by one of the employees, or was committed by some unknown person under the supervision and control of an employee.

All of the employees, including the janitor, were placed on the lie detector. They were all cleared with the exception of Mr. Scott and Mr. Farquhar.

Mr. Farquhar was thoroughly checked as to his actions after leaving the office and he was cleared.

It was learned that Mr. Scott made a long distance telephone call to your office at 9:10 p.m. and talked for two minutes and twenty-seven seconds. This call plus one to his wife and one to another employee, Dick Held, were made after Mr. Scott returned to the office. Mr. Scott remembers calling his wife but does not remember calling the head office, nor does he remember calling Mr. Held. He further states that he then left the airport and arrived home a few minutes prior to 10:00 p.m. Insp. Mallon made this trip during daylight hours under normal conditions and it took forty-five minutes. The night that Mr. Scott left the airport was the foggiest night we have had this year. All planes were grounded. The ground visibility was extremely limited and Mr. Scott insists that he was home before 10:00 p.m.

The fact that the call was made to Washington, D. C., at 9:10 p.m. it would be reasonable to assume that it would be about 9:20 p.m. before Mr. Scott finished the call and walked to the parking lot to get his car. This would give him less than forty minutes to get home. Faced with these facts Mr. Scott stated that it seemed impossible but he did it. His wife also substantiated his getting home by 10:00 p.m.

Our investigation is still continuing and we are still pursuing along our original lines ending further developments.

Yours very truly,

/s/ LESTER J. DIVINE,  
Chief of Police.

AM:ns

Received December 22, 1953.

[Endorsed]: Filed March 30, 1954.

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[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS AND IN  
THE ALTERNATE TO STRIKE

To Independent Military Air Transport Association,  
a corporation, plaintiff in the above-entitled  
cause, and to its attorneys, Richard Ernst and  
R. L. Miller, 16 California Street, San Fran-  
cisco 11, California:

Please Take Notice that the undersigned will  
move this court at the United States Courthouse in



the City of San Francisco on the 26th day of April, 1954, at 9:00 o'clock a.m. or as soon as counsel may be heard, for an order that the above-entitled action be dismissed on the following grounds: Failure to state a claim upon which relief can be granted.

In the alternative, if the above motion be denied, that there be stricken from said complaint the following:

I.

From Paragraph IV on Page 3, commencing with "Said loss and the facts and circumstances" in Line 11 thereof, and ending with "and control of an employee" in Line 16 thereof, on the grounds:

- a. That the matters therein stated are incompetent;
- b. That the matters therein stated are heresay;
- c. That the matters therein stated attempt to express a conclusion of opinion of the Police Department;
- d. That the matters therein stated attempt to plead evidence that would not be admissible in court and the permitting of the same in said complaint is prejudicial to this defendant.

II.

To strike from said complaint Exhibit B thereof, or in the alternative to strike from said Exhibit B, on the grounds that said Exhibit B and the documents attached thereto recite matters which are incompetent, heresay, attempts to recite opinions and

conclusions of other parties and an attempt to recite matters by pleading which would not be admissible as evidence and that are highly prejudicial to the rights of this defendant.

### III.

If said motion be denied then said defendant will move the court to strike from said Exhibit B on the grounds hereinbefore stated, all matters in said Exhibit B and in the documents attached thereto having any reference to statements made or letters written by or opinions expressed by the Chief of Police of the City of Oakland, or the Oakland Police, or the Police Department, and particularly all matters stated in that portion of the document entitled "Proof of Loss" attached to said complaint and referred to in the complaint as "Exhibit B," commencing with the third paragraph thereof on Page 1 with the words, "Also attached hereto marked Appendix B" and ending with the end of said paragraph on Page 2 of said Exhibit B with the words "in the City of Oakland, County of Alameda, State of California."

### IV.

Also to strike from said complaint the document referred to in Exhibit B as "Appendix B," being a letter, or copy of a letter, dated December 18, 1953, addressed to Ramsay D. Potts, Jr., Independent Military Air Transport Assoc., 1025 Connecticut Ave., Washington, D. C., and signed by Lester J. Divine, Chief of Police, on the grounds that the said letter is incompetent, hearsay, an expression

of an opinion, a conclusion of the writer, and that said document contains statements which would be inadmissible as evidence in a trial of the case, and is an attempt to place in the record matters which would not be admissible in evidence in a trial, and matters which are highly prejudicial to the rights of this defendant.

/s/ THOMAS E. DAVIS,  
Attorney for Defendant.

Service of copy acknowledged.

### Memorandum of Points and Authorities

Matters which are incompetent or irrelevant or prejudicial may be stricken from the complaint:

12 Fed. Rules Service 12 F. 21, case 4, page 139;  
S. K. Williams Co. v. Mechanics Educational  
Society of America. U. S. District Court,  
Northern District of Ohio (May 20, 1949).

### I.

Said complaint does not state a claim upon which relief can be granted:

There is no allegation in the complaint to the effect that plaintiff alleges either directly or on information and belief, that the plaintiff has sustained any loss by reason of any fraud or dishonesty on the part of any employee or employees of the plaintiff.

The allegations in that respect being "Said loss

is alleged to have been caused by the fraud and dishonesty of one or more of the plaintiff's employees and plaintiff is unable to designate the specific employee or employees causing such loss.' It is not said by whom said loss is alleged to have been caused. It is not a statement that plaintiff alleges that it has been so caused.

Respectfully submitted,

/s/ THOMAS E. DAVIS,

[Endorsed]: Filed April 16, 1954.

---

[Title of District Court and Cause.]

### ANSWER

Comes Now the Defendant in the above-entitled cause and for answer to plaintiff's complaint herein admits, denies and alleges as follows:

#### First Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

#### Second Defense

The defendant admits the allegations of Paragraphs I, II and III of said complaint; alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of said complaint, and denies each and every allegation therein contained.

II.

Answering Paragraph V of said complaint, said defendant admits that the plaintiff gave the defendant written notices and delivered to the defendant certain schedules and filed with this defendant a document entitled Proof of Loss, copy of which is attached to said complaint and marked "Exhibit B."

III.

Answering Paragraph VI of said complaint, said defendant admits that it has failed and refused and still fails and refuses to pay the plaintiff said claim or any portion thereof, but denies that such failure or refusal is wrongful or without cost.

IV.

Denies each and every allegation in said complaint not hereinbefore admitted, or specifically denied, and denies that there is due, owing or unpaid from this defendant to plaintiff, the amount stated in said complaint or any other amount.

/s/ THOMAS E. DAVIS,

Attorney for Defendant General Accident, Fire and Life Assurance Corporation, Limited, a Corporation.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 8, 1954.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER  
FOR JUDGMENT

Defendant contracted to indemnify plaintiff for any loss, up to \$50,000.00 which the evidence submitted "reasonably establishes," was due to the fraud or dishonesty of one or more of plaintiff's employees acting alone or in collusion with others. The evidence does reasonably establish that the loss incurred by plaintiff was due to the dishonesty of one or more of its employees, rather than to the act of a stranger. The presumption of innocence, upon which defendant heavily relies, is inapplicable. For it is not disputed that an act of fraud or dishonesty was committed. Proof that a particular person committed the act is not required.

Defendant has expressed concern that a judgment in plaintiff's favor will unfairly brand plaintiff's employees as felons. But, the employees are not parties to this action. The judgment here does not brand any one of them as a wrongdoer any more than do the facts themselves.

Judgment may enter for plaintiff upon findings presented according to the Rules.

Dated: April 26, 1955.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed April 27, 1955.



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial before the Court, sitting without a jury, Messrs. Richard Ernst and R. L. Miller appearing as attorneys for plaintiff and Thomas E. Davis, Esquire appearing as attorney for defendant, and was tried on February 17, 1955, and evidence having been adduced, the matter fully argued and memoranda of authorities filed by both parties, and the Court being fully advised in the premises now makes the following

### Findings of Fact

#### I.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the District of Columbia, and defendant is a corporation organized and existing under the laws of the Kingdom of Great Britain doing business in the State of California and having an office in said state in the City and County of San Francisco. The matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00).

#### II.

On October 15, 1952, defendant issued to plaintiff a Comprehensive Dishonesty, Disappearance and Destruction Policy of insurance whereby defendant

agreed with plaintiff, among other things, to indemnify plaintiff for all loss, to a limit of Fifty Thousand Dollars (\$50,000.00) sustained by plaintiff during the term of the said policy:

“1. Through any fraudulent or dishonest act or acts, committed anywhere by any of the Employees acting alone or in collusion with others, including loss of Money and Securities and other property through any such act or acts of any of the Employees, and including that part of any inventory shortage which the Assured shall conclusively prove to have been caused by the fraud or dishonesty of any of the Employees, the amount of insurance on each of such Employees being the Limit of Liability applicable to this Insuring Agreement 1.”

By said policy defendant further agreed:

“If a loss is alleged to have been caused by the fraud or dishonesty of any one or more of the Employees and the Assured shall be unable to designate the specific Employee or Employees causing such loss, the Assured shall nevertheless have the benefit of this Insuring Agreement, provided that the evidence submitted reasonably (in case of inventory shortage, conclusively) establishes that the loss was in fact due to the fraud or dishonesty of one or more of the said Employees, and provided further that the aggregate liability of the Company for any such loss shall not exceed the Limit of Liability applicable to this Insuring Agreement 1.”



III.

Plaintiff has paid to defendant all premiums required by the terms of the said policy and has kept and performed all terms and conditions thereof on its part to be kept and performed, and said policy was in full force and effect on November 27th and 28th, 1953.

IV.

On November 27th or 28th, 1953, plaintiff suffered a loss of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven cents (\$15,-728.57) in United States currency and coin by theft from a cash box in a drawer of a desk of an office occupied and used solely by plaintiff and its employees at the Oakland Municipal Airport in the City of Oakland, County of Alameda, State of California. Said premises are specifically covered by the said policy.

V.

The said loss was alleged by plaintiff to be and the evidence adduced reasonably establishes that it was due to the dishonesty of one or more of plaintiff's employees, rather than to the act of a stranger.

VI.

On December 1, 1953, plaintiff gave to the defendant written notice of the said loss and thereafter and on December 28, 1953, plaintiff delivered to defendant schedules itemizing said loss. Thereafter on March 1, 1954, within the time prescribed by the terms and conditions of said policy of insurance,

plaintiff prepared and filed with defendant affirmative, itemized proof of loss duly sworn to in full compliance with the terms of said policy of insurance, showing the loss to be in the sum of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven cents (\$15,728.57) and made a demand for said sum under the terms of the said policy.

## VII.

Defendant failed, refused and neglected to pay plaintiff the said sum of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven cents (\$15,728.57) and neither the whole nor any part thereof has ever been paid to plaintiff.

Upon the above findings of fact the Court now makes the following

## Conclusions of Law

The Court has jurisdiction of this action under the provisions of Title 28 United States Code, Section 1332.

## II.

Plaintiff is entitled to judgment against defendant in the sum of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven cents (\$15,728.57) with interest thereon at the rate of six per cent (6%) per annum from March 1, 1954, to the date of entry of judgment, together with its costs of suit to be taxed by the Clerk.

Let Judgment Be Entered Accordingly.

Dated: June 15th, 1955.

/s/ LOUIS E. GOODMAN,

United States District Judge.

Receipt of copy acknowledged.

Lodged May 2, 1955.

[Endorsed]: Filed June 16, 1955.

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District Court of the United States, Northern  
District of California, Southern Division  
Civil No. 33441

INDEPENDENT MILITARY AIR TRANS-  
PORT ASSOCIATION, a Corporation,

Plaintiff,

vs.

GENERAL ACCIDENT, FIRE AND LIFE AS-  
SURANCE CORPORATION, LIMITED, a  
Corporation,

Defendant.

### JUDGMENT

The above-entitled cause came on regularly for trial before the Court, sitting without a jury, Messrs. Richard Ernst and R. L. Miller appearing as attorneys for plaintiff and Thomas E. Davis, Esquire, appearing as attorney for defendant, and was tried on February 17, 1955, and evidence having been adduced, the matter fully argued and memoranda of authorities filed by both parties, and the Court having filed herein its memorandum and Order for Judgment and its Findings of Fact and Conclusions of Law.

Now Therefore, It Is Ordered, Adjudged and Decreed that plaintiff have judgment against defendant in the sum of Fifteen Thousand Seven Hundred Twenty-eight Dollars and Fifty-seven cents (\$15,728.57) together with interest thereon at the rate of six per cent (6%) per annum from March 1, 1954, to the date of this judgment, and for its costs of suit, to be taxed and hereinafter inserted by the Clerk of this Court in the sum of \$.....

Dated: June 15th, 1955.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

Lodged May 2, 1955.

[Endorsed]: Filed June 16, 1955.

Entered June 17, 1955.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given That General Accident, Fire and Life Assurance Corporation, Limited, a corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 17, 1955.

/s/ THOMAS E. DAVIS,  
Attorney for Appellant, General Accident, Fire and Life Assurance Corporation, Limited.

Receipt of copy acknowledged.

[Endorsed]: Filed June 28, 1955.

In the District Court of the United States for the  
Northern District of California, Southern Division

No. 33441

INDEPENDENT MILITARY AIR TRANSPORT ASSOCIATION, a Corporation,

Plaintiff,

vs.

GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LIMITED, a Corporation,

Defendant.

Before: Hon. Louis E. Goodman, Judge.

REPORTER'S TRANSCRIPT

Appearances:

For Plaintiff:

RICHARD ERNST, ESQ.,  
R. L. MILLER, ESQ.,  
16 California Street,  
San Francisco, California.

For Defendant:

THOMAS E. DAVIS, ESQ.,  
405 Montgomery Street.

February 17, 1955, 10:00 P.M.

The Clerk: Independent Military Air Transport Association versus General Accident, Fire and Life Assurance Corporation, Court trial.

Mr. Miller: Ready.

Mr. Davis: Ready.

The Clerk: Will respective counsel please state their appearance for the record.

Mr. Miller: For the plaintiff, R. L. Miller and Richard Ernst.

Mr. Davis: Thomas E. Davis for the defendant.

Mr. Miller: Your Honor, I think that we can expedite this matter if I make a very brief statement. You will recall we were before you for a pre-trial conference.

The Court: Yes, I have read the pleadings.

Mr. Miller: The issues then are narrowed to two things, the amount of the loss and whether or not the loss was covered by the insurance policy.

So with that preliminary statement, if your Honor has read the pleadings, you are familiar with the provisions of the insurance policy, and it is our position that all we must present here is reasonable evidence that the loss was due to the dishonesty of an employee, even though that employee is [3\*] unknown.

I will call as the first witness for the plaintiff, Mr. Roach.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.



FRANCIS J. ROACH

was called as a witness on behalf of the plaintiff, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Will you please state your name to the Court.

The Witness: Francis J. Roach.

Direct Examination

By Mr. Miller:

Q. What is your address, Mr. Roach?

A. 1706 Commonwealth Avenue, Alexandria, Virginia.

Q. And are you an employee of Independent Military Air Transport Association?

A. Yes, sir, I am.

Q. What is your position with that company?

A. I am comptroller.

Q. And how long have you occupied that position? A. Since July 23, 1952.

Q. And you were comptroller for Independent Military Air Transport Association during the month of November of 1953?

A. Yes, sir; I was.

Q. And were you at that time informed of a loss that the company had suffered?

A. Yes, sir, I was. [4]

Q. And from whom did you get that information?

A. I received it from Mr. George Hogue, who was the supervisor of field activities.

(Testimony of Francis J. Roach.)

Q. And did you later ascertain the amount of that loss?      A. Yes, sir, I did.

Q. And how did you ascertain the amount of the loss?

A. By normal accounting procedures. We began by calculating the exact amount of tickets which were presented to us by the airlines in the carrying of passengers. We subtracted from the value of the tickets, we subtracted all of the money that was recovered and deposited into the Bank of America, and with detailed calculations which were presented as part of the complaint, the balance of the money was believed to be the exact amount that was stolen or lost.

Q. You were not at that time in California?

A. No, sir, I was not.

Q. You were not in Oakland at the time the loss occurred?      A. That's right.

Q. Do you know of your own knowledge whether any part of this—Well, withdraw that question.

What did your calculations show as to the amount of the loss?

A. I don't recall the exact figures. It was \$15,700.

Q. I will show you a statement which is an exact copy, Mr. Davis, this is a carbon copy of the statement that was [5] attached to the claim you have in your file, and——

Mr. Davis: Attached to the complaint, you mean?

Mr. Miller: Yes, attached to the complaint; also



(Testimony of Francis J. Roach.)

attached to the claim; also attached to the complaint.

Q. (By Mr. Miller): And was that statement prepared by you? A. Yes, every word of it.

Q. And that is the statement that was made and exhibited and attached to the complaint in this action? A. Yes, sir, it was.

Q. And what does that show?

A. The amount of the——

Q. The loss as computed by you?

A. Yes, sir, it does.

Q. And by reference to that, can you at this time tell us what that amount was?

A. It was \$15,728.57.

Q. Do you recall that at the time this loss that was reported to you, that the money that was allegedly stolen at Oakland was all currency?

A. I recall that it was not all currency.

Q. It was not all currency? Now, do you know of your own knowledge whether any part of this fifteen, round figures, \$15,000 has been recovered by your employer?

A. I know that nothing of this amount has been recovered by the employer in any way. [6]

Q. Prior to November 27, 1954, did you issue, as comptroller for Independent Military Air Transport Association, did you issue any instructions to the person or persons in charge of your Oakland office as to how cash should be handled?

A. Yes, sir, I did.

(Testimony of Francis J. Roach.)

Q. In what form were those instructions?

A. Some of them were in written memorandum form, and some of them were conversations and some were teletype messages.

Q. Do you recall approximately when the first instructions were issued as to how cash should be handled?

A. Yes, it was in April of 1954—1953, I am sorry.

Q. Did you know that during the week of November, immediately preceding November 28, 1953, that your Oakland office was collecting large amounts of cash?

A. I was aware that there was a possibility that they might, but I wasn't certain.

Q. Do you remember during that week that they had collected large amounts of cash?

A. The first I knew of it was when Mr. Scott called me at my home on November 25 and told me approximately how much money he thought he had with him.

Q. Do you recall about how much he had at that time, or said he had?

A. He said it was over \$15,000, but he was not certain.

Q. That was on November 25? [7]

A. Yes, sir.

Q. What time of the day was that call?

A. I received it in my home at nine p.m. Eastern Standard Time.

(Testimony of Francis J. Roach.)

Q. Did you at that time give him any instructions as to what he should do with this money?

A. Yes, we discussed considerable alternate possibilities and we, we decided that—I instructed him to take the money to Western Union and purchase a Western Union money order for it, and have it sent to himself in order that he might complete his cash report at his leisure.

Q. Do you know whether he followed those instructions?

A. I didn't know he didn't follow those instructions until I was notified of the loss.

Q. You say that was Mr. Homer Scott?

A. Mr. George Hogue was the one who notified me.

Q. But I mean this telephone conversation was with Mr. Scott? A. It was with Mr. Scott.

Q. What was Mr. Scott's position with the IMATA at that time?

A. He was manager of the Oakland office.

Mr. Miller: For the sake of the Reporter and the Court, we are all so familiar that we refer to the plaintiff as IMATA rather than its full name. If I slip into that fallacy, if no one has an objections, it might be easier to call it [8] IMATA in line with many other agencies today that use the letters as abbreviations of their name.

Q. (By Mr. Miller): He was then in charge of the Oakland office? A. He was.

Q. And he was the employee of the company who was responsible for the safekeeping of this money?

(Testimony of Francis J. Roach.)

A. He was, yes.

Mr. Miller: You may cross-examine, counsel.

### Cross-Examination

By Mr. Davis:

Q. In general, what is the business of the plaintiff, your employer?

A. The general business is military agent for the member airlines in contracting for official military transportation and servicing the transportation officers at the field and assisting military personnel to travel on furlough, if available.

Q. Prior to November, 1953, had this office been functioning in the same place with the same personnel?

A. Yes, sir, it had been.

Q. Yes. Prior to that time who purchased the transportation and paid for it that was being obtained through your office in Oakland?

A. There were two kinds, sir. The Department of Defense purchased most of it, and a very small amount was purchased [9] by individual military personnel.

Q. And the money, or the transportation that was purchased by the Department of Defense would be paid in what form?

A. By the airline billing to the finance officers in Washington, D. C., receiving payment by check.

Q. And no money, no currency or cash would come into your Oakland office?

A. No, sir.

Q. On account of such purchases.

Now, prior to November, 1953, what amount

(Testimony of Francis J. Roach.)

would be the average amount, say, per month of cash that would be received by the Oakland office from the sale of independent tickets—or individual tickets to personnel?

A. There were some months when it was nothing and some months when it was as high as \$20,000, and it varied; sometimes zero and sometimes that much.

Q. Now, what was done with that cash that was received?

A. It was deposited in our bank account at the Bank of America.

Q. Where?

A. At the nearest one, as far as I know.

Q. I beg your pardon, I didn't hear that. What branch?

A. Our exact account was with the Bank of America in Burbank.

Q. Burbank, California? [10]

A. Yes, sir. The deposits were made to any branch of the Bank of America.

Q. And you know what branch had been used?

A. I know that the branch was used at Parks Air Force Base.

Q. Parks Air Force Base; where is that located?

A. I am not certain.

Q. You are not familiar with the local geography of Oakland Airport and vicinity?

A. I was there, sir, at Parks Air Force Base, but I can't define it.



(Testimony of Francis J. Roach.)

Q. I was going to say how many miles is it from your office?

A. I believe it is about fifteen or twenty miles.

Q. About fifteen or twenty miles.

Now, when you received this telephone call from Mr. Scott, you remember what day of the week that was?

A. It was a Wednesday.

Q. That was the Wednesday evening before Thanksgiving Day?

A. Yes, sir; it was.

Q. Yes. And your instructions to him were what?

A. To purchase a Western Union money order at the Western Union office at the Oakland Municipal Airport.

Q. Yes. And was that the last instructions that were conveyed to him by you?

A. Yes, sir. [11]

Q. Do you know why that—ever explained to you why that wasn't purchased?

A. An employee of our company investigated the loss on the scene and he reported to me.

Q. I am asking you——

A. Only what I heard.

Q. What?

A. Only what I have heard from other reports.

Q. I see.

Now, in arriving at the amount, I understood you to say that you obtained this information from records furnished you by the airlines that carry the passengers whose tickets were purchased through this agency in Oakland, or this office?

(Testimony of Francis J. Roach.)

A. I am sorry, I must have oversimplified it. Our personnel made out a ticket of which we had a carbon copy. The ticket was given to the airline and the airline sent us a bill attaching the tickets, and we paid the airline as proof of service.

Q. So that those tickets, the carbon copies, are tickets made by your Oakland office?

A. Yes, sir; they were.

Q. Now, were those made up by the Oakland office in Treasure Island?      A. Yes, sir.

Q. Wasn't it a fact that practically all these tickets were [12] sold on Treasure Island?

A. Yes, sir; they were.

Q. Yes. Now, these copies you are talking about, isn't it a fact they were made up at Treasure Island?      A. Yes, sir; they were.

Q. And the money was received at Treasure Island?      A. Yes, sir.

Q. Yes.

Mr. Davis: I think that is all.

Mr. Miller: Just one more question.

### Redirect Examination

By Mr. Miller:

Q. Mr. Roach, did you receive from your Oakland office a cash report that was made up by the office there?      A. Yes, sir; I did.

Mr. Miller: Have you seen this, Mr. Davis?

Q. (By Mr. Miller): I show you, Mr. Roach, a document captioned "IMATA Cash Report No.

(Testimony of Francis J. Roach.)

1125'' and ask you if that is the cash report that you received from your Oakland office and from which you prepared the final statement that formed an exhibit to the complaint?

A. Yes, sir; this is it.

Q. Now, I will call your attention that on Page 7 of this document, there appears a statement, "Total loss," followed by the figures, "\$15,554.86," while the figure that you have [13] testified to as appearing as a claim in your complaint was some \$15,700, and I ask you how you account for that difference?

A. I distinctly recall that there was one particular ticket which was not listed on this cash report which was prepared by our office and forwarded to us by a carrier.

Mr. Davis: I couldn't hear that last part.

The Witness (Continuing): There was one ticket that was prepared by our office given to a carrier, the carrier paid in money and then discovered it was left off this cash report, and it was approximately for \$100.00. And in addition to the change funds were included in the funds that were then collected and the change funds amounted to about \$200.00, and part of that was lost, too.

Q. So that those discrepancies were due, as you recall, to the fact that one ticket was not included in this one cash report that was included in your final report——

A. Yes, sir.

Q. ——and certain adjustments in the change account?

A. That's right, sir.



(Testimony of Francis J. Roach.)

Mr. Miller: I have no further questions.

Mr. Davis: No questions.

The Court: You want to mark that in some way?

Mr. Miller: I would like to have this marked for identification, your Honor. Not going, at this time, to offer it in evidence. [14]

The Clerk: Plaintiff's Exhibit 1 marked for identification.

(Whereupon document referred to was marked Plaintiff's Exhibit No. 1 for Identification only.)

Mr. Miller: You may step down.

(Witness excused.)

Mr. Miller: Mr. Robert Farquhar.

### ROBERT LEE FARQUHAR

was called as a witness on behalf of the plaintiff and, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court.

The Witness: Robert Lee Farquhar.

### Direct Examination

By Mr. Miller:

Q. What is your present address, Mr. Farquhar?

A. 2243 Santa Clara Avenue, Alameda.

Q. And by whom are you employed?

A. The Independent Military Air Transport Association.

(Testimony of Robert Lee Farquhar.)

Q. That is the plaintiff in this action?

A. Yes.

Q. How long have you been employed by the Independent Military Air Transport Association?

A. Since the latter part of October, 1953. [15]

Q. Then you were employed by IMATA at the time of this loss that we have referred to here?

A. Yes, I was.

Q. What was your position at that time with them?

A. Well, I was one, I think, of seven or eight employees under Mr. Scott and I was, worked both on official and unofficial traffic. I think my main job was the unofficial traffic, which was the ticketing of individual passengers.

Q. And did that include the selling of tickets and collecting of cash?

A. Yes; it did.

Q. And during the week of November 25 to 28, or the week ending November 28, 1953, were you engaged on behalf of your employer in the selling of transportation?

A. Yes; I was.

Q. And the collecting of cash?

A. Yes; I was.

Q. And where did those operations take place?

A. At Treasure Island; the bulk of it was at Treasure Island.

Q. Was any of it done at Parks Air Force Base?

A. I don't think so at the time. I couldn't be sure, but I know that most of it, I mean all of it, really, as far as I remember, was done at Treasure Island.

(Testimony of Robert Lee Farquhar.)

Q. And what was your—would you just describe briefly [16] to us the procedure of receiving and handling of this cash and what you did with the cash money you took in?

A. Well, Marines would come in usually, oh, in groups of up to three thousand. As I remember, this is a very large move, probably about two thousand Marines coming in through Treasure Island for re-assignment and discharge, and I think they arrived by ship on, oh, Friday or Saturday—I think it was Saturday, and on Monday.

Q. Now, when you say “Monday,” can you fix the day of the month? Was it Monday of the week which ended on November 28? A. Yes.

The Court: Monday before Thanksgiving.

The Witness: Right.

Q. (By Mr. Miller): Monday before Thanksgiving?

A. Yes. As a matter of fact, we went over there on Sunday, which we had more or less of gentleman’s agreement with the other two associations that we wouldn’t sell on Sunday.

Q. Yes.

A. And we went that Monday with the cash box and we had change in that box to make change with.

Q. Yes. Now, when you say “we,” who do you mean, Mr. Farquhar?

A. Well, now, Mr. Held was over there and we had a Miss Ferris also——

Mr. Davis: What is that name?

(Testimony of Robert Lee Farquhar.)

The Witness: Miss Ferris, Peggy Lois [17]  
Ferris.

Mr. Davis: Spell it.

The Witness: I think it is F-e-r-r-i-s. I am not sure of the spelling now.

Q. (By Mr. Miller): And those persons, Mr. Held and this Miss Ferris were also employees of IMATA? A. Yes.

Q. And they were employed—were they full-time employees? A. Yes; they were.

Q. They were employed to perform the same type of service you were in the selling of this transportation? A. Yes.

Q. You may proceed. After you sold tickets, you received cash. Now, what did you do with this cash?

A. We didn't sell tickets to begin with Monday morning when we all opened up. The procedure was to make reservations and if possible collect a deposit.

Now, the men weren't paid off, you see, until the 25th. That is the day they were due to depart. So you couldn't, they didn't have the money to pay the full fare. We collected the deposit, of course, as much as we could get, usually from five to ten dollars, or occasionally a twenty-dollar deposit.

So, at the end of each day, we would make reservations, we would bring the cash box back to the office in Oakland.

Q. That office was at the Oakland Airport?

A. At the Oakland Airport. [18]

Q. Well, when the cash box was brought back

(Testimony of Robert Lee Farquhar.)

there, let's take first Monday night, what was done with it? First, what was done with the money in the cash box?

A. Well, now, that I can't remember exactly. I know that—by that I mean I can't remember the sequence of days there up until Wednesday, of course. I remember on Wednesday, but I think the bulk of the money was left at the office and we took just enough back the following Monday morning to make change again.

Q. With whom was that money left, the bulk of the money?

A. Well, either with Mr. Scott or Mrs. Keene. I can't remember exactly.

Q. Who was your superior in that office at that time? A. Mr. Scott.

Q. That's Homer Scott? A. Yes, sir.

Q. Now, as to Wednesday of that week, do you remember coming back from Treasure Island on that day? A. Yes, sir; I do.

Q. And you had the cash box with you?

A. Yes, sir.

Q. And did it have a considerable amount of cash in it? A. Yes; it did.

Q. Do you know how much was in it?

A. No; I don't. It was around \$15,000 at the time, though [19] I don't remember exactly, because there were some in the office and some in the cash box, but the majority was, because that was the day, you see, they paid their balance of their tickets.

Q. Up to that time, up until the time that you



(Testimony of Robert Lee Farquhar.)

returned to the office on Wednesday, and what time of day was that?      A. On Wednesday?

Q. Yes.

A. Well, it was probably between two and three, or two and four. I am not sure of the time.

Q. And up to that time, had you made any accurate count of the monies you had collected?

A. No; I hadn't.

Q. It had been your practice to turn over most of the money to Mr. Scott at the office and retain the rest for change, is that right?

A. Yes; as far as——

Q. Now, will you tell us exactly what happened as near as you can recall on Wednesday after you returned to the office, what you did with the cash box and with the money? [20]

A. Well, I can remember on Wednesday returning and I think—well, I remember definitely putting it in a canvas money bag most of the money, now; I don't know just how much there was, and giving it to Mr. Scott. Now, I still kept some in the cash box, more than I did on the previous days when I went to Treasure Island, and I went over to the counter, have a transportation counter in another building out there, and I think the reason at that time that we had more money was because of possible refunds.

Q. Did you sell more tickets there that day?

A. Yes; we did. I am not sure, but I am pretty sure we sold.

Q. Make refunds there, too?

A. I don't remember.

(Testimony of Robert Lee Farquhar.)

Q. You can't remember. But you do recall going to the counter with the cash box with some money in it?      A. Oh, yes.

Q. But most of the money before that time had been placed in a canvas bag and delivered to Mr. Scott, is that right?      A. Yes.

Q. Do you recall what was done with that money, the money that was in your cash box, and the money that was in the canvas bag on the night of November 25, or do you know?      A. Well—— [21]

Q. That was Wednesday night.

A. Yes; I understand, now.

Q. Do you know of your own knowledge?

Mr. Davis: Don't want your understanding.

Q. (By Mr. Miller): Do you know of your own knowledge? What did you do with the money that night? Did you give it to Mr. Scott?

A. Yes; I gave it to Mr. Scott, and then the cash box, I think, I gave to Mrs. Keene, or Mr. Scott, one of the two.

Q. You returned the cash box either to Mr. Scott or Mrs. Keene, you don't remember which?

A. Yes.

Q. From there on, did you have any personal handling of that money that night?

A. No; I didn't.

Q. I refer now to Friday, November 27, that is the day after Thanksgiving. Do you recall what you did on that day?

A. Yes; I went to Parks Air Force Base. I

(Testimony of Robert Lee Farquhar.)

came in the office—I can't remember—I think it was between 9:00 and 10:00 Friday morning.

Q. And you went out to Parks Air Force Base?

A. Out to Parks Air Force Base.

Q. Did you collect any monies there? [22]

A. Not that I remember. I am not sure, but I don't think so.

Q. At what time did you return to the office that day?

A. It was around, between 4:00 and 5:00.

Q. In the afternoon? A. Yes.

Q. And when you returned to the office, what did you do?

A. Mrs. Keene, I remember, was working on the cash report, and I think both Mr. Scott and Mrs. Keene were—and I remember that Mr. Scott counted the cash, and the best of my recollection, it was about three, four, five hundred dollars off.

Q. When you say "off"—

A. Well, it was short, I think. I am not sure, but I think it was short, and so to double check it I counted it, the currency only.

Q. You counted the currency?

A. Yes; the bills.

Q. Do you remember how much currency there was in dollar amount?

A. No; I don't remember the exact amount, no.

Q. Do you remember approximately how much it was?

A. Well, it was in excess of \$15,000.

Q. The currency was in excess of \$15,000?



(Testimony of Robert Lee Farquhar.)

A. Yes. [23]

Q. But you don't recall the exact amount?

A. No; I don't.

Q. Did you make a memorandum at that time as to the amount?      A. Yes; I did.

Q. Did you try to find that memorandum after I asked you to try to find it?

A. Yes. No; I couldn't find it.

Q. Could not find it?

A. I don't know who has that.

Q. Did you assist in the preparation of the cash report?      A. No; I didn't.

Q. Who prepared the cash report?

A. Mrs. Keene.

Q. Now, when you were in the office on that Friday afternoon after returning from Parks Air Force Base, who else was there aside from you, Mrs. Keene and Mr. Scott?

A. I don't remember. As far as I know, that particular time there were only the three of us there.

Q. You are sure they were there, but you don't recall anyone else?      A. I can't remember.

Q. And at that time did Mr. Scott ask you to count this money?

A. I think he did, yes. I am not sure of that, but he [24] must have; I counted it.

Q. Because you did count it?      A. Yes.

Q. After the money was counted, what was done with it?

(Testimony of Robert Lee Farquhar.)

A. Well, I remember we counted—when it was first counted, we were in the inside office.

Q. Well, now, when you say the “inside office,” will you describe briefly the office layout?

A. Well——

Q. How many offices were there?

A. There are two offices, and there is a partition between the two. It's a glass paneled partition; you can see between the two offices, but what I call the outside office is the street office.

Q. That is where you would enter when you come in from the street?

A. Right. What I call the inside office is the office in toward the hangar, that opens up into the hangar.

Q. There is a door from that office into the hangar of what airline?

A. Well, they keep a lot of small airplanes in there. It isn't—I think United controls that.

Q. It is one of the hangars at the Oakland Airport?

A. Right.

Q. Now, you then—you say you were in the inside office? [25]

A. Yes.

Q. And what did you do with the money?

A. Well, as I remember, the money was placed in piles on the inside along the floor board, the bills, and I am not sure, but the change must have been in the change box, you know.

Q. You mean the money was placed on the floor and not on the desk?

(Testimony of Robert Lee Farquhar.)

A. Right. That was supposed to keep it out of sight so people from the street couldn't see it.

Q. Well, after this counting was finished, what was done with the money?

A. It was put in the cash box.

Q. Would you describe the cash box?

A. Well, it is about, oh (indicating), eighteen by fifteen, maybe; maybe three, four inches deep.

Q. Was it metal? A. Yes; it was metal.

Q. And it had a lock? A. Yes; it did.

Q. And did you have the key to it?

A. Yes; I did.

Q. Do you know if anyone else in the office had a key to it?

A. No; I don't know whether they had a key to it or not. [26]

Q. Do you know if there were any other keys to the cash box kept in the office?

A. Yes; there were.

Q. Where were those keys?

A. In the desk in the outside office.

Q. How many desks were there in the outside office? A. Two.

Q. How many desks in the inside office?

A. One.

Q. One. And who occupied or used the desk in the inside office as general matter?

A. Mr. Scott.

Q. Now, after the money was placed in the cash box, about what time of day was that when the counting was finally finished?

(Testimony of Robert Lee Farquhar.)

A. About 7:30, I think; between 7:00 and 8:00 in the evening.

Q. And at that time who was there in the office with you? A. Mr. Scott.

Q. When did Mrs. Keene leave?

A. About 7:00 o'clock.

Q. So that she wasn't there when the cash was finally put back in the cash box?

A. No; she wasn't. [27]

Q. What was done with the cash box?

A. It was locked in Mr. Scott's middle right-hand drawer.

Q. Of his desk? A. Of his desk, yes.

Q. And who had the key to that desk?

A. Mr. Scott.

Q. Did you retain the key to the cash box?

A. Yes; I did.

Q. And who decided, or whose suggestion was it that the money be locked up in the desk?

A. That I can't remember who suggested that.

Q. Did you have any discussion or conversation with Mr. Scott at that time as to what should be done with this money? A. Yes, sir.

Q. And do you recall what the substance of that conversation was, what he said and what you said?

A. Well, I can generally, yes. The safe at Transocean was discussed again.

Q. When you say "safe," safe at——

Mr. Davis: Transocean office at——

The Court: The safe at Transocean was discussed.

(Testimony of Robert Lee Farquhar.)

Q. (By Mr. Miller): Had you mentioned this safe at Transocean—is that Transocean Air Lines?

A. Yes; that is Transocean Air Lines. [28]

Q. Is their office close to IMATA office there?

A. It isn't far; I think maybe two or three hundred yards at the most.

Q. You think it is two or three hundred yards?

A. Yes.

Q. And had you previously had, at any time previously had money been deposited in that safe?

A. Well, now, I wasn't sure whether Transocean——

Q. You don't know whether they had?

A. Well, I knew they deposited in a Transocean safe on—well, Wednesday night.

Q. But you didn't make that deposit?

A. No; I had heard.

Q. Mr. Farquhar, to clarify, perhaps, was the handling of this cash and the safekeeping of it part of your duties?

A. No, sir. Well, handling the cash was.

Q. That is when you received it? A. Yes.

Q. When you turned it into the office, your duty was not the safekeeping of the money thereafter, is that right? A. No, sir.

Q. You turned it over to your superior, Mr. Scott? A. Yes, sir.

Q. Now, coming back to the conversation, about 7:30 on Friday night, November 27, you recall that you had a [29] conversation with Mr. Scott about what to do with this money overnight?

(Testimony of Robert Lee Farquhar.)

A. Yes; I did.

Q. And were there alternatives suggested as to what to do with it?      A. Yes, sir.

Q. And did you make any suggestions?

A. Yes, sir; I suggested the safe in the gas station which is right across the street.

Q. Is that a large gas station?

A. Yes; it is.

Q. And what oil company, if you know?

A. Shell.

Q. Do you know if it is owned by the oil company or is it a privately-owned station?

A. Privately-owned station, I am quite sure.

Q. You know they had a safe?      A. Yes, sir.

Q. What other suggestions did you make?

A. Transocean, Transocean safe.

Q. Yes. And did Mr. Scott make any comments or suggestions as to handling of the money?

A. Well——

Q. At that time?

A. He suggested that he could take it home with him, that [30] he had a rather vicious dog at home, quite sure nobody would get near the house.

Q. What was finally done with the cash box?

A. It was placed in the drawer and the drawer was locked.

Q. And then did you and Mr. Scott leave the office?      A. Yes; we did.

Q. And prior to leaving, were all doors and windows of the office securely fastened?

A. Well, it was subsequently found out they



(Testimony of Robert Lee Farquhar.)

weren't. At the time, the doors were checked, to the best of my knowledge. I can't remember, but we were in the habit of always checking the back door and front door, but——

Q. The nearest you know, those doors were locked when you left?      A. Yes.

Q. When you say subsequently you found that it was not securely fastened, what do you mean?

A. Well, not the doors, but one of the windows was open.

Q. Was the window open or simply unfastened?

A. Unfastened.

Q. And when did you discover that?

A. That was discovered the following day.

Q. On Saturday?      A. Saturday.

Q. Was there any evidence that you could observe, anyone [31] had entered by that window?

A. No; as I understand——

Q. No; just did you observe any evidence anybody entered?      A. No.

Q. About what time was it when you and Mr. Scott left the office?

A. Oh, it must have been between 7:30 and 8:00.

Q. And as near as you know, both doors were securely locked?      A. Yes.

Q. Were the lights left on or turned off?

A. They were left on.

Q. The lights were left on?

A. I am quite sure.

Q. Was it the usual practice to leave the lights on in the office at night?      A. Yes.

(Testimony of Robert Lee Farquhar.)

Q. Was there a janitor employed by the company to do the janitor work?

A. Yes; there was.

Q. And was he employed full time or part time?

A. Well, full time. He comes in once a day.

Q. I mean—— A. Well——

Q. He came in every day?

A. Every day, yes. [32]

Q. But he didn't spend his full time there?

A. Oh, no; no.

Q. He just came in to do the janitor work?

A. Yes.

Q. What time would he usually come in, if you know?

A. He would come in any time between 5:00 and 7:00 in the morning. Now, I am not sure of that, either. I have seen him in there at 6:00 or 7:00 in the morning.

Q. He did his work in the morning, not at night?

A. Yes.

Q. Also used as a janitor by other offices at the airport? A. Yes.

Q. Do you recall his name?

A. Harold Pitts.

Q. He was employed to do the janitor work by the company? A. Yes; he is.

Q. When you left the office that night with Mr. Scott, where did you go?

A. To the airport bar.

Q. Did Mr. Scott go there with you?

A. Yes; he did.



(Testimony of Robert Lee Farquhar.)

Q. How long did you stay in the bar?

A. Well, I left at about a quarter of nine or ten to, and Mr. Scott left just prior to that, maybe five, ten, fifteen minutes. [33]

Q. He left just before you left? A. Yes.

Q. Shortly. Do you know where he went when he left you? A. No; I don't.

Q. When you left there, where did you go?

A. I went down to the Villa de la Paix.

Q. Where is that?

A. That is down at the foot of the freeway, the Oakland freeway, just as you come to Oakland.

Q. Did you return at any time that night? Did you return to the office of your employer at the airport? A. No, sir.

Q. You did not? A. No, sir.

Q. Now, when did you next go back to that office?

A. The following morning about 11:30.

Q. That was Saturday morning, the 28th?

A. Yes, sir.

Q. Where did you live at that time?

A. In Berkeley, 822 Santa Barbara Road, Berkeley.

Q. Had you plans, when you left on Friday night, had you planned to return to work on Saturday morning?

A. I don't think so. I don't think I had. I couldn't answer that.

Q. Do you recall why you went over on Saturday morning? [34]

(Testimony of Robert Lee Farquhar.)

A. Yes; because Mrs. Keene called me about 10:30 and told me to pick her up and take her to the bank.

Q. Where was she when she called you, did she say?  
A. No; she didn't.

Q. Do you know where she was?

A. I think she was in the office.

Q. You thought so, but you don't know that?

A. No.

Q. You then went from your home in Berkeley to the airport, is that right?  
A. Yes, sir.

Q. You got there about 11:30?  
A. Yes, sir.

Q. And who was there when you arrived?

A. Mrs. Keene—whether Mr. Scott was there at the time or not or just up picking the mail—but he was there right after. Whether he was there at the time, I can't remember, but, as I understand, he was at the airport.

Q. In other words, you recall, though, either at the time you arrived or shortly thereafter, Mrs. Keene and Mr. Scott were there?

A. Mrs. Keene was definitely there, because she opened the door and told me about the bank being closed.

Q. Was there anyone else besides Mrs. Keene or Mr. Scott?

A. Mr. Held was there, but I can't remember whether he [35] came there after I did or whether he was there when I got there.

Q. Now, will you tell us what happened after

(Testimony of Robert Lee Farquhar.)

you got there at 11:30 that morning, as near as you can recall?

A. Well, as near as I can recall, they were working on the cash report.

Q. When you say "they" were, who do you mean?

A. Well, Mrs. Keene, and I can't remember whether Mr. Scott was at the time or not.

Q. Mrs. Keene was working on the cash report?

A. Yes.

Q. And this was, oh, about 11:30?

A. Quarter of twelve. And at 12:30, or approximately 12:30 it was decided to count the cash again, and Mr. Scott gave me the key to his desk and Mr. Held at the time was working at Mr. Scott's desk, or he was in the back office, and I remember I had trouble with Mr. Scott's key. Then Mr. Held helped me. You have to open the center drawer before you can pull out the side drawers.

Q. And the cash box was in the side drawer?

A. Side drawer, yes. So then we got the cash box out of there. As I remember, both of us walked into the other room. I unlocked the cash box.

Q. Was the cash box locked when you took it out of the desk? [36]

A. Yes, it was.

Q. And you unlocked it?

A. Yes.

Q. Yes. Then what happened?

A. Well, it was discovered that the——

Q. When you unlocked it, did you look in it?

A. Oh, yes.

Q. Did you see anything missing from it?

(Testimony of Robert Lee Farquhar.)

A. Yes; I did.

Q. What was missing? A. The currency.

Q. All the currency? A. Yes.

Q. Well, was there anything left in the box?

A. Coin and checks, postal money orders, checks.

Q. And coin? A. And coin.

Q. All currency was gone from the cash box?

A. Yes, sir.

Q. When you discovered that, I understand Mrs. Keene was in the room, Mr. Scott was in the room, and Mr. Held was in the room? A. Yes, sir.

Q. What did you say when you saw this money missing?

A. I can't remember. I remember it was a shock and I [37] remember what I was thinking, but I can't remember. I know I said something; it was something pertaining to Mr. Scott. I thought he had taken it home with him, you see.

Q. And you recall Mr. Scott saying anything?

A. Well, not now. He said something, but said something, "You're joking, you're kidding," or something along those lines.

Q. Yes. A. But—

Q. And then who reported the loss, do you know? A. Mr. Scott.

Q. Yes. Do you remember approximately how many employees there were employed at or in connection with the Oakland office of IMATA at that time, in November of 1953?

A. Yes, sir. Full-time employees?

Q. Yes; full-time employees.

(Testimony of Robert Lee Farquhar.)

A. There were seven, if I remember correctly; seven.

Q. During this week while this operation was going on, when this fifteen, over fifteen thousand dollars was collected, how many part-time employees were there?

A. I think there were just one.

Q. Just one part-time employee? A. Yes.

Q. Can you remember the names of the employees that were employed at that time? [38]

A. Yes, sir. I think Miss Harris at Monterey, and a Miss Ferris, at Treasure Island, and a Miss Caldwell at Parks, a Mr. Held——

Mr. Davis: Go a little slower, please.

The Witness: Yes.

A. (Continuing): As a matter of fact, to correct that, I think now, I think there were eight employees. I will name them off.

Mr. Davis: Miss Harris at Monterey?

The Witness: Yes.

Mr. Davis: The next one?

The Witness: Ferris, at Treasure Island.

Mr. Davis: What is the next?

The Witness: Caldwell, Miss Caldwell.

Mr. Davis: Where?

The Witness: At Parks Air Force Base.

Mr. Davis: Yes.

The Witness: Mr. John Maxwell, he was at San Diego. I think he came up the next day.

Mr. Davis: By next day, you mean Sunday?

(Testimony of Robert Lee Farquhar.)

The Witness: Sunday or—no; it could have been Saturday; I don't remember.

Mr. Davis: I mean, it was after you discovered the shortage?

The Witness: Yes. [39]

Q. (By Mr. Miller): Now, of these employees you mentioned one, for instance, at Monterey. Did she report into the Oakland office?

A. She was responsible to the Oakland office.

Q. But did she come to that office frequently?

A. No, she didn't; she came up once for a sales meeting.

Q. She wasn't in that office at any time during this, we will say, on Friday, November 27, or Saturday—

A. No, sir.

Q. —November 28? A. No, sir.

Q. Were there other of those employees who would not have been in that office during that week?

A. I don't think Miss Caldwell was.

Q. But the others would have been there at some time during the week?

A. Yes; I think so, except for Mr. Maxwell.

Q. And would all those employees have known, we will say, with the possible exception of Miss Caldwell and Miss Harris, would they have known a large amount of cash was collected and kept in that office, and could they have known?

A. They could have, yes.

Q. They could have known that? A. Yes.

Q. Do you recall any time before this week dur-



(Testimony of Robert Lee Farquhar.)

ing the [40] operations where large amounts of cash were kept in that office over night?

A. Before this particular week?

Q. Yes.

A. No, I don't. I had only been with IMATA, say, for just about a month, you see, a little less than a month.

Q. And you never had occasion to make bank deposits up to that time?

A. I don't remember, but I don't think so.

Mr. Miller: Your witness, Counsel.

### Cross-Examination

By Mr. Davis:

Q. You were speaking of employees, you gave the names of four, Miss Harris, Miss Ferris, Miss Caldwell, and Maxwell. Those were in addition to the four that you have been mentioning, being yourself and Mrs. Keene and Mr. Held, Mr. Scott?

A. Yes, sir.

Q. Now, you said there was one temporary employee; who was that?

A. Yes, sir; that was my brother. He had been in the business before and he knew it and, as I remember that particular day, we were very busy and we needed him at Parks Air Force Base.

Q. What day was that, day of the week? [41]

A. 25th, November 25th.

Q. On the 25th, that is the first time he had worked for the company?

A. I don't remember. I think he worked—he



(Testimony of Robert Lee Farquhar.)

had worked a couple of times for us, but I don't know whether it is before or after that.

Q. The 25th, as I understand it, that was the Wednesday before Thanksgiving? A. Yes.

Q. Your brother had worked one day, is that it?

A. Yes, sir.

Q. At Parks Air Force? A. Yes.

Q. But you know whether he was in the office at the Oakland—in your office at Oakland that day at all? A. No; I don't think he was.

Q. Yes. He didn't have a key to the office?

A. No, sir.

Q. Now, were any of these four you have mentioned, Miss Harris, Miss Ferris, Miss Caldwell or John Maxwell in the office at any time between the morning of the 25th and noon of the 28th?

A. I think the only one that could have been——

Q. I want to know whether you know. You would have known—were you there all the [42] time?

A. From the 25th through the 28th, no, I wasn't there.

Q. You do not know whether any of them were in the office during that period of time?

A. No.

Q. Their employment did not pertain to doing any work in or about the office, did it?

A. No. There were exceptions when we would check in there occasionally, but——

Q. But do you know during that period of time?

A. Well, from Monday, the 23rd, or the 24th,

(Testimony of Robert Lee Farquhar.)

I think Miss Ferris was over there helping to write up tickets, had a lot of tickets.

Q. During those two days——

A. From Treasure Island, yes, sir.

Q. From Treasure Island?

A. That was her office over there, you see.

Q. She was at Treasure Island, as I understand you to say, on the 25th?      A. Yes.

Q. Which was Wednesday?      A. Yes.

Q. The 26th was a Thursday?      A. Yes.

Q. And on Friday—you say she was there on the 26th?

A. You say she was there on the 26th? That was Thanksgiving. [43]

Q. The office was closed then?      A. Yes.

Q. And on Friday, the 27th, was she at Treasure Island that day?      A. Yes, sir.

Q. Do you know where her home was?

A. Yes, I do. It's on Sacramento Street, in Berkeley.

Q. In Berkeley?      A. Yes.

Q. So that when she left Treasure Island, she would have no occasion to go in the vicinity of the office at the Oakland Airport?      A. No, sir.

Q. No. Now, you said that Mrs. Keene phoned you on Friday morning—or Saturday morning, and asked you to pick her up to take the money to the bank, is that right?      A. Yes, sir.

Q. Yes. As far as you knew, she phoned you from the office, is that it?      A. Yes, sir.

Q. Yes. And when you came there you found

(Testimony of Robert Lee Farquhar.)

that she and, as you recall, Mr. Scott were actually rechecking the cash sheets?

A. As far as I recall, yes. I am not sure.

Q. I see. Now, I believe you said that there were keys [44] to the cash box in the desks in the outer office?

A. Yes, sir.

Q. Yes. Who ordinarily occupied those desks?

A. Well, I did, Mr. Held, and Mr. Maxwell, we just used alternately, we used the desk when we needed it, that particular desk.

Q. That was a spare desk? A. Yes.

Q. For whoever happened to be in?

A. Yes.

Q. And the other desk was occupied by whom?

A. In that front office? Mrs. Keene.

Q. Yes. Was there ever any occasion when you personally locked those doors, front or back?

A. Yes, sir.

Q. How often had that occurred?

A. Well, I couldn't say how often, but it occurred frequently.

Q. Yes. On this evening that you speak about, on the evening of the 27th, Friday evening, do you remember whether it was you or Mr. Scott that locked the doors as you went out?

A. I don't remember, sir.

Q. You don't remember who locked them?

A. No. [45]

Q. You didn't—you don't recall personally examining them to see that they were locked?

(Testimony of Robert Lee Farquhar.)

A. I don't recall, but we shake it, have a habit of shaking the door to make sure it is latched.

Q. Did you personally look at the windows to see if they were fastened? A. No, sir.

Q. I believe you said, as a matter of fact, that on the next morning it was found that one of the windows in the rear or in the back room was unfastened? A. Yes, sir.

Q. Yes. Do you know what kind of lock was on the front door?

A. No; I don't know the name of it, the particular type you insert the key into the door knob. It isn't underneath the door knob.

Q. And did you have to use a key to lock it when you went out?

A. No, you don't, you just push the button on the inside in and it automatically locks.

Q. The button in the middle of the inside knob?

A. Yes, sir.

Q. Kind of a push button? A. Yes.

Q. And when you push that in and then close the door, it [46] automatically locks, is that it?

A. Yes, sir.

Q. Were you there at any time when the inspectors, or anyone of the police force was attempting to open that door without a key; were you present when anything like that occurred?

A. I can't remember. I remember there was some talk about it, but I can't remember.

Q. You don't remember whether you were in the office or not?

(Testimony of Robert Lee Farquhar.)

A. No; I remember there was some talk about it.

Q. Did you ever try to get into that office by the front door and found that by shaking the outside knob that you might open the door without a key?

A. I tried it once; I think it did happen once.

Q. That you had that occasion——

A. But I can't remember, but I did try once, I think.

Q. And it opened without using a key. You remember when that was?

Mr. Miller: Wait until he answers. I don't think—had you completed?

Q. (By Mr. Davis): Had you completed your answer?

A. No. I am trying to think whether it did or not, because occasionally we leave our keys at home. I think it was just a habit of shaking the door, trying to get in; whether [47] it happens or not—it doesn't ninety-nine out of a hundred times, but I can't remember.

Q. But you do recall once, as you remember, it did open without using a key?

A. No; I don't remember that it opened that time. I remember shaking it and trying to get in. I can also remember having to break a window once to get in that way.

Q. Well, awhile ago you said you did remember once that opened that way.

The Court: I don't think so. He said he tried it once.

(Testimony of Robert Lee Farquhar.)

The Witness: I tried, yes. I don't remember—I am quite sure it didn't.

Q. (By Mr. Davis): I see. And had you heard any of the employees there make a remark it could be opened that way? A. No—oh, how?

Q. By shaking the outside lock.

A. Oh, no; not that; no.

Q. You hadn't heard any remarks?

A. No, sir.

Q. Did you see anyone attempting to open this desk drawer of Mr. Scott's desk when the desk was locked, without the use of the key?

A. Yes, sir.

Q. And were they successful?

A. Yes, sir. [48]

Q. Will you explain to us how that happened?

A. Yes. As far as the details go, I don't know how it was done, but Mrs. Keene, she put her hand up underneath the right side of the desk facing it and evidently flipped some sort of a lever there, and the drawer would come open.

Q. They came open without the use of a key?

A. Yes, sir.

Q. Now, this tin box, or this cash box, I believe you called it, the box that was kept in the office there, or that was in the office on the night of this loss that occurred, was the same box that you had been using at Treasure Island, is that right?

A. Yes, sir.

Q. And do you know whether these other folks



(Testimony of Robert Lee Farquhar.)

that were at other locations were using similar boxes?

A. Well, I don't know about the Treasure Island, no. I think there were other boxes like that around the airport.

Q. I mean around this office, being sent out and brought back to this same office.

A. No; I don't know. You mean in our office?

Q. In your office; I am talking about your office.

A. Oh, I see. Yes; there would be, oh, occasionally turned in and sent to various installations.

Q. Well, was there——

The Court: No; he wants to know whether this was the [49] only box in use around the office?

The Witness: Oh, no; there were other boxes, yes.

Q. (By Mr. Davis): There were other boxes around the office? A. Yes.

Q. Were there any other of the cash boxes there on the morning of November 28, 1953, when this cash was found to be missing?

A. I don't remember, sir.

Q. Was this the only box that was in that particular drawer? A. Yes. Yes, sir.

Q. You don't know whether there were similar boxes in the office?

A. No; we usually had them in the installations; they bring them in occasionally.

Q. Yes, I see. I didn't hear where—you say when you left the office with Mr. Scott, where did you say you went?



(Testimony of Robert Lee Farquhar.)

A. On the evening of the 27th?

Q. On the—yes, on Friday evening.

A. The Villa de la Paix.

Q. I mean, you said first—I believe you said you and Mr. Scott went together.

A. Oh, to the airport bar.

Q. To the airport bar? [50] A. Yes.

Q. You arrived there about 8:45 p.m., is that it?

A. No.

Q. Left there about that time?

A. Left about that time, yes.

Q. Now, you are an employee and one of the employees that had a key to this door. I will ask you this one question: Did you take this money or any part of it? A. No, sir.

Q. Do you know who took it or any part of it?

A. No, sir.

Mr. Davis: I think that is all.

Mr. Miller: Just one question by way of clarification.

### Redirect Examination

By Mr. Miller:

Q. You testified on cross-examination, Mr. Farquhar, that Mrs. Keene demonstrated how the desk could be opened without a key. When did that occur, before or after the loss of the money?

A. After.

Q. Do you remember approximately when was it—on Saturday when the loss was discovered?

A. Yes; it must have been Saturday afternoon.

(Testimony of Robert Lee Farquhar.)

Q. Yes. Was that before or after the police came?      A. I don't remember.

Q. But it was definitely after the desk had been opened [51] and after this loss had been discovered?

A. Yes.

Q. And do you remember if anybody asked her to do it, or did she volunteer to do it?

A. I don't remember, sir.

Q. But you remember her reaching down and turning this gadget and opening the desk?

A. Yes, sir.

Q. At any time did you see Mrs. Keene demonstrate how other doors or locks could be opened in that office without keys?

A. I don't remember her demonstrating, no. I remember a discussion on it, though.

Q. Do you remember her at any time saying she could open the door without a key?

A. Yes, sir. She didn't say she could, herself; I think a friend of hers once did, though.

Q. She said a friend of hers opened it without a key?      A. Yes, sir.

Q. Was that before or after this loss?

A. It was after.

Q. Yes.

Mr. Miller: No further questions.

Mr. Davis: No further questions.

The Court: We will take a brief recess. [52]

(Brief recess.)

Mr. Miller: Do you have any further questions of Mr. Farquhar, Mr. Davis?

Mr. Davis: No.

Mr. Miller: Mrs. Keene.

EVELYN KEENE

was called as a witness on behalf of the Plaintiffs, having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court.

The Witness: Evelyn Keene.

Direct Examination

By Mr. Miller:

Q. Are you employed at the present time, Mrs. Keene? A. Yes, I am.

Q. Who is your employer?

A. The Air Coach Transport Association.

Q. Were you previously employed——

Mr. Davis: I couldn't hear very well.

Mr. Miller: Why not move over there?

Mr. Davis: I didn't hear.

The Witness: I am now employed by the Air Coach Transport Association.

Mr. Davis: Air Coach? [53]

Q. (By Mr. Miller): Were you previously employed by Independent Military Air Transport Association? A. Yes, sir.

Q. How long did you work for them?

A. I don't know, but approximately two and a half, maybe three years.

Q. Were you employed by Independent Military

(Testimony of Evelyn Keene.)

Air Transport Association during the month of November, 1953?           A. Yes, sir.

Q. And at that time what were your principal duties?

A. I was Mr. Scott's immediate assistant, secretary and sort of a "Girl Friday."

Q. Yes. You did bookkeeping or accounting work?

A. That was very limited, because we were not in common carriage. We had just got into common carriage. In fact, this move in question was our first major move.

Q. Did you prepare the cash report with respect to this operation?           A. Yes, sir.

Q. Called the major move?           A. Yes, sir.

Q. I will show you a document that is marked Plaintiffs' Exhibit 1 for Identification and ask you if that is the cash report which you, yourself, prepared?           A. Yes, sir. [54]

Q. And that was prepared during the week ending November 28, 1953, isn't that right?

A. That is right, sir.

Q. I call your attention particularly to Page 7 of that report where there is an item marked, "Total loss."           A. Yes, sir.

Q. \$15,554.86, and ask you if that is the figure that you arrived at as the amount that was lost from the office at that time?

A. No, sir; it isn't the figure that I personally arrived at. I was working with Mr. Tyrell, who is the—I don't know whether he is an employee of

(Testimony of Evelyn Keene.)

IMATA—and together, after numerous interruptions, he came up with this figure and had me write it on this cash report.

Q. Yes. Do you know, then, when you testified this is your cash report, were all the entries on that report made by you? A. Yes, sir.

Q. And that this figure of \$15,000 was arrived at after your working with Mr. Tyrell, was it before or after—that was after the loss?

A. That's right, Mr. Miller.

Q So that you are not sure that figure is exactly right, is that right?

A. Not exactly right. [55]

Q. Would you say it was right within a few dollars? A. I would say so, sir, yes.

Q. You would say that the loss then would be—that the loss from this theft or disappearance of the money would have been, say, not less than \$15,000?

A. That's right, sir.

Q. And we will say, then, not more than \$15,700?

A. That's right, sir.

Q. So that within those ranges that is a correct amount? A. I would say so.

Q. You are not sure that that exact amount is a correct figure, but it would be in excess of \$15,000?

A. That is right, Mr. Miller.

Mr. Miller: I am going to ask, your Honor, this be admitted in evidence. Any objection, Counsel?

Mr. Davis: I have no objection.

The Clerk: Plaintiffs' Exhibit 1 admitted into Evidence.



(Testimony of Evelyn Keene.)

(Whereupon cash report referred to above, previously marked for identification only, was received into Evidence as Plaintiffs' Exhibit No. 1.)

Q. (By Mr. Miller): I want to call your attention, Mrs. Keene, to the week ending November 28, 1953, and particularly to Wednesday of that week. That's the day before Thanksgiving, which would have been November 25. Do [56] you remember that day? A. Yes, sir

Q. Do you remember if you were working at the Independent Military Air Transport Association office on that day? A. Yes, sir; I was.

Q. Calling your attention particularly to the afternoon of that day, do you remember Mr. Farquhar, who testified here this morning, returning to the office with a cash box?

A. I don't remember that too clearly, sir.

Q. Do you remember, however, that on that day you had a considerable amount of cash in that office, is that right? A. That's right, sir.

Q. And was Mr. Scott there that day?

A. Yes, sir.

Q. And do you recall what was done with the money and checks and cash, coins that you had in that office that day? What was done with it at the close of business that day, Wednesday, before Thanksgiving?

A. Yes, sir; at the close of the day the money was taken and put in Transocean's office safe.

(Testimony of Evelyn Keene.)

Q. It was put in Transocean's office safe?

A. That's right, sir.

Q. And who took it to Transocean's office that day?      A. I did, sir.

Q. You did. And under whose instructions did you take it [57] to the office of Transocean and put it in their safe?      A. Mr. Scott.

Q. Had you, prior to that time, received any specific instructions from the Washington office of IMATA, or from anyone else in IMATA as to how the cash should be handled and what should be done with it?

A. As I recall, sir, Mr. Scott talked with Mr. Roach on the phone. Mr. Scott may or may not have told me what his conversation was. Right now, I don't recall.

Q. But you didn't talk to Mr. Roach on the phone?

A. But I, myself, didn't talk to Mr. Roach.

Q. Did you talk over the instructions he might have given to Mr. Scott, is that right?

A. That is right.

Q. Did Mr. Scott at any time tell you what his instructions were?      A. I believe he did, sir.

Q. What were they?

A. I don't remember.

Q. You don't remember?      A. No, sir.

Q. But you do know on this Wednesday you discussed the money which was at that time somewhere in the neighborhood of \$15,000?

A. That's right, sir. [58]



(Testimony of Evelyn Keene.)

Q. And would that have been \$15,000 in currency?

A. There should have been somewhere around here a receipt for the amount that was put in the Transocean's safe, because Mr. Herman, who was manager of the Transocean restaurant, gave me a receipt for the amount of money he put in his safe.

Q. Yes, but you don't remember the exact amount?

A. But I don't remember the exact amount.

Q. But it would have been, as you recall it, in excess of \$15,000?

A. It may or may not have been, sir. I don't recall, because I don't recall how much the—whether or not the checks were in that or whether it was just the cash.

Q. And you took this money to Transocean, and prior to taking it to Transocean, had you been instructed by Mr. Scott to do anything else with it?

A. Yes, sir; we were going to take it to Western Union and wire it to Washington, D. C. And so we put the money in a canvas bank satchel. Mr. Scott sent me through the hangar to the Western Union Office, which is in the main terminal building. [59]

Q. I don't want to interrupt you, but approximately what time of day was that?

A. I would say it was in the early evening.

Q. After the banks had closed?

A. Yes, sir. Shall I continue?

Q. Go on with just what you did.

A. I went through the hangar, Hangar 1, which

(Testimony of Evelyn Keene.)

is a private hangar, and across a portion of the field there, the driveway portion of the field, and through United Freight section to the Western Union office, and Mr. Scott walked along the sidewalk and out the front and met me at the Western Union office. I was standing out in front of the window and he called me to come back into the Western Union office, which I did.

And he said, "Will you take care of this money?"

And I said, "All right, sir, I will."

And then the young lady there gave me the cost of wiring this money to Washington, D. C.

Well, I can't recall exactly how much it cost to wire the money, but I was always—this was such a frugal company and gave us such limited monies to work with, that I thought, well, that maybe they would be a little unhappy if I spent all this money to wire the money back east, I'd better consult with Mr. Scott again and ask him if he would like me to do it.

Q. Do you recall approximately how much that was, would it have been \$46.00? [60]

A. Somewhere in that area, sir; maybe \$10 more.

Q. It was in the neighborhood of \$50, the cost for wiring it? A. That's right.

Q. You thought that would be too much and wanted to again discuss it with Mr. Scott?

A. That's right.

Q. Where did you go to see Mr. Scott then?

A. Mr. Scott was sitting in the cocktail lounge, the TALOA bar, and the girl in the Western Union

(Testimony of Evelyn Keene.)

office gave me a manila envelope to put this sack in and I talked to Mr. Scott there.

Q. You took it into the bar?

A. Yes, into the cocktail lounge, not into the bar proper.

Q. Cocktail lounge?

A. Yes, and Mr. Scott said, "Well, what we will do is ask Mr. Franz Herman if we can use his office safe." I don't know whether he discussed the office safe or the restaurant safe?

Q. Who is Franz?

A. Franz Herman is the manager for the Trans-ocean Restaurant and Bar.

Q. Manager of that restaurant? A. Yes.

Q. And so then what did you?

A. So I found Mr. Herman and asked him if we may do it, and [61] he said yes, and with that he came with me over to the office, I gave him the money and he gave me a receipt for the amount, and it stayed there that night.

Q. You saw it put in the safe? A. No.

Q. The safe was closed, you received a receipt from Mr. Herman?

A. Yes. At that time Mr. Herman told me, "We will put it in the office safe and not in the restaurant safe, because too many people have the combination to the restaurant safe."

Q. Did he tell you how many people had the combination to the Transocean office safe?

A. I am not sure, sir; I think he said two people, he and Amie, his assistant.

(Testimony of Evelyn Keene.)

Q. Now, on Friday, the next day after this Wednesday—the next day after this Wednesday was Thanksgiving, and you were not in the office that day?

A. That is right, sir.

Q. The money remained in the safe, as far as you know, over Thanksgiving, is that right?

A. That's right, sir.

Q. Now, when was the money taken out of the safe?

A. Well, let's see. I came to work Friday morning, sometime, sir, I can't tell you.

Q. You don't remember the exact time? [62]

A. No.

Q. Friday morning, the 27th?

A. Right, sir.

Q. Did you go to the safe and get the money out?

A. No, I went to the office and found Mr. Herman, and then we both went over and he took the money out of the safe.

Q. You went and got Mr. Herman and went to the safe and he turned the money over to you, and then you took it back IMATA's office?

A. That is right, I received it.

Q. As you recall, what was your job, or what were your duties on that Friday?

A. Well, the foremost thought in all minds, of course, was write up the last week's cash report. It is repetitious and not a difficult thing to do, it is just long, and Mr. Scott came in early that morning,

(Testimony of Evelyn Keene.)

as I recall; we have a spare desk in this front office and Mr. Scott had the auditor's coupons for these tickets, and we were checking them off the cash report as I was writing them up.

Q. And that is the day you prepared this document I have identified here?

A. Yes, sir; started that time.

Q. Started; you finished it afterwards?

A. Yes.

Q. But that was the day you were working on that. Did you [63] at any time that day count the money? A. No, sir.

Q. Do you know who counted the money?

A. Well, yes, I do. Mr. Scott and Mr. Farquhar counted the money, because I know Mr. Farquhar's writing and he had a page from the legal tablet and on there he had how many 20's he had counted, and how many 10's and so forth. I know they didn't have very many large bills, there were numerous 20's, and also some tapes around, and we knew approximately what the figure was.

Q. And would you say that figure was approximately fifteen thousand dollars?

A. Yes, sir; It was definitely.

Q. Within a few dollars of the correct amount, was that right? A. Yes, sir.

Q. Might be \$15,500 or seven hundred—

A. I saw the tapes; approximately.

Q. The amount of currency would have been something in excess of \$15,000?

A. That is right, Mr. Miller.

(Testimony of Evelyn Keene.)

Q. Why, if you know, why was the money kept in the office all that day and not deposited in the bank? Now, that was a Friday, the banks were then staying open until six o'clock, isn't that right? [64]

A. May be right, but I don't know the banks were open until six o'clock. As a matter of fact, I thought they were open on Saturday mornings. I rarely go to the bank.

Q. You rarely go to the bank?

A. That is right.

Q. You rarely made any deposits in the bank for IMATA?

A. I made a few, but I would always have Mr. Maxwell or somebody drive me. My personal banking I take care of by mail.

The Court: Mr. Miller, would you go down there? The witness talks to you and I can't hear.

The Witness: I am sorry.

Q. (By Mr. Miller): Now, you would make deposits in the bank for IMATA from time to time, is that right? A. Yes, sir.

Q. What bank office did you take the money to?

A. I took it to Alameda, sir, because it was the closest to the Oakland Airport.

Q. The Alameda office was the closest?

A. Bank of America, yes.

Q. About how far is that from the airport?

A. I don't know how far, be about a fifteen minute drive.

Q. But on this Friday, the money was not taken to the bank, is that right? A. No, sir. [65]



(Testimony of Evelyn Keene.)

Q. And what time did you leave the office on Friday?

A. Approximately seven o'clock. Seven p.m.

Q. And who was there when you left?

A. Mr. Scott and Mr. Farquhar, they were in the process of counting.

Q. They were still in the process of counting money, is that right? A. Yes.

Q. When did you next return to the office?

A. Saturday morning to complete my cash report and make the deposit.

Q. And about what time did you arrive there on Saturday morning?

A. Oh, somewhere, I suppose, between eight and eight-thirty. I know it had to be early.

Q. And when you went to the office that morning, was the door locked? A. Yes, sir.

Q. When you went in did you observe any open windows? A. No, sir, I didn't.

Q. Did you observe any open doors? Was the back door fastened?

A. Yes, the back door was fastened.

Q. Did you look at Mr. Scott's desk in the office at that time when you first went in? [66]

A. Well, yes, sir, I always go empty the ash trays in case the porter didn't do it.

Q. Did you see any signs at all——

Mr. Davis: I couldn't hear the witness.

The Witness: I used to dust Mr. Scott's desk every morning and straighten it out.



(Testimony of Evelyn Keene.)

Mr. Davis: The top of the desk?

The Witness: Yes, sir.

Mr. Davis: Didn't try the drawers?

The Witness: No, sir.

Q. (By Mr. Miller): Did you observe any signs at all that there had been anyone who had opened the desk and left the desk open, or anything like that, the night before? A. No, sir.

Q. No signs of entry, forceable or otherwise?

A. No, sir.

Q. What time did Mr. Scott arrive there that morning?

A. Shortly after I did, because I hadn't started, I hadn't gotten into my work when Mr. Scott came.

Q. Was there anyone else there that morning?

A. No, not for awhile. I understand Mr. Held was there, but I don't remember when he came in or what I was doing when he got there.

Q. Do you remember Mr. Farquhar coming that morning?

A. Yes, sir; I called him from the Oakland office. [67]

Q. About what time did you call him?

A. I imagine around ten, ten-thirty, something like that.

Q. And what was the reason for calling him?

A. I wanted an escort to the bank.

Q. You knew he lived in Berkely, didn't you?

A. Yes, sir.

Q. That is a considerable distance from the Oakland Airport? A. Right.

(Testimony of Evelyn Keene.)

Q. And Mr. Scott was there with you. Why didn't Mr. Scott act as the escort to the bank?

A. Well, I can't answer that, sir; I don't know.

Q. Did Mr. Scott ask you to call Mr. Farquhar and ask him to come over?

A. I don't know whether he did or whether I suggested it, or whether I said I'd better call Bob and get him out here.

Q. While you and Mr. Scott were in that office Saturday morning, did Mr. Scott ask you to go and see if the cash box was in his desk?

A. Yes, sir; he did.

Q. Did he hand you the key to his desk and ask you to go in and open the desk?      A. Yes, sir.

Q. And did you do that?

A. Mr. Scott handed me the keys to his desk, said, "Mike, will you please check and see if the cash box is still in the [68] desk."

I went to the desk, looked at the box, locked it and returned the keys.

Q. You didn't take that cash box out of the desk?      A. No, sir.

Q. Didn't you think that was an unusual request for him to make?

Mr. Davis: Object to that as calling for an opinion.

The Court: Sustained.

Mr. Miller: Withdraw the question.

Q. (By Mr. Miller): Had there been other occasions when Mr. Scott directed you to go and see if there was something in his desk?

(Testimony of Evelyn Keene.)

A. Yes, sir.

Q. What were those occasions, if you recall?

A. Oh, sometimes a person—I can't recall, but I do recall Mr. Scott used to give me the keys to his desk.

Q. When he was right in the office with you?

A. I don't recall, sir.

Q. You don't recall any other occasions like this one?

A. No, sir.

Q. Now, what time did Mr. Farquhar arrive?

A. I should say around eleven-thirty.

Q. After Mr. Farquhar arrived, was the desk opened and the cash box taken out? [69]

A. I don't quite understand, Mr. Miller.

Q. I mean—what I am getting at, who took the cash box out of the desk?

A. Mr. Farquhar.

Q. And at what time was that?

A. Shortly after he arrived.

Q. Yes. And do you recall if Mr. Scott asked him to do it?

A. No, I don't, sir.

Q. You don't recall. You know that he took the cash box out of the desk?

A. That is right.

Q. And who was present in the office at that time?

A. Mr. Scott, Mr. Farquhar and Mr. Held and myself.

Q. Yourself. And where was the cash box opened up?

A. As I recall, there was some difficulty in opening the desk at the time, so Mr. Held went

(Testimony of Evelyn Keene.)

over to Mr. Farquhar and helped him open the desk. Then they both brought the cash box into the front office and Mr. Held—I mean Mr. Farquhar had the key to the cash box, so he opened it.

Q. Now do you remember, can you remember if he said anything when he opened that cash box and looked in it? A. Yes, sir, I can.

Q. What did he say?

A. "All right, Scotty, where is the money?"

Mr. Davis: What was that? [70]

The Witness: "All right, Scotty, where is the money?"

Mr. Davis: Yes.

Q. (By Mr. Miller): And where was Mr. Scott standing at that time, with regard to the desk?

A. Close by, sir.

Q. Was he facing Mr. Farquhar or standing to his back to him? A. That I don't know.

Q. Do you recall if Mr. Scott said anything in respect to this statement of Mr. Farquhar's?

A. I can recall quite well how Mr. Scott looked. He had just turned absolutely gray. He said, "It should be in there." And then—No, wait a minute. I can recall he said, "You are kidding."

And Mr. Scott just turned gray.

Q. Do you recall having demonstrated how the desk could be opened without a key?

A. Yes, sir, very well.

Q. What was the occasion for that?

A. Well, Mr. Scott always keeps his desk locked, and I always kept my desk locked, and at times I

(Testimony of Evelyn Keene.)

would want to put, for instance, some returned checks from the bank, his personal checks had fallen out of his desk, and I wanted to slide them through the desk in order to put them back in. I keep my desk locked; occasionally I have forgotten the keys to my [71] desk and couldn't get into it, almost had to break it open.

So when the money was missing, I couldn't imagine how anyone could get in the desk if it were locked. So I crawled under the desk and I saw this little hook, and I pressed it down with my finger, and the drawer opened.

Q. Did you know that you could do that before that time?

A. Well, no, sir; or I wouldn't have to break into my own desk.

Q. Was that before the police arrived?

A. Yes, sir.

Q. Do you recall any time when you or some friend of yours opened the front door of that office without a key?

A. Yes, sir.

Q. What was that occasion?

A. My father-in-law brought me to work—this was after the robbery, or loss, and I, I don't remember whether or not I had forgotten my keys, so I told him about the police being able to open the door with a plastic card.

Q. Let me——

A. He tried it and he opened it.

Q. You say the police opened the door with a plastic card?

A. Yes.

(Testimony of Evelyn Keene.)

Q. Did you see them do that?

A. No, I was in the office at the time. I didn't see them do it, but I can remember—I don't know whether he was uniformed [72] man or a plain-clothesman, he said at the time, "This door can be opened with a card."

The Court: With a what?

The Witness: A card.

The Court: A card?

The Witness: Card.

Mr. Miller: Card.

Q. (By Mr. Miller): Now, what did your father-in-law do; will you describe what he did?

A. I told him about it, and he said, "Well, I wonder if he can do that," so he opened the door with a plastic card.

Q. When you say "a plastic card," will you describe that to us?

A. I have one here, sir. It would be just like this, only made out of plastic, flexible plastic.

Mr. Davis: I wonder if I could see that.

Q. (By Mr. Miller): Will you hold it up?

A. Let's see if I have a plastic calendar card.

Q. But something like this?

Mr. Davis: Maybe we all have some of these.

Q. (By Mr. Miller): Something like this? It is a plastic calendar card; something like that. Did you try to open the door with a card like that? Were you able to do it?



(Testimony of Evelyn Keene.)

A. I wasn't successful, no.

Q. You were there when your father-in-law did it? [73]

A. Yes, sir.

Q. Slipping the card in the edge of the door?

A. Yes.

Q. This was after the—— A. robbery

Q. Robbery. Had you ever opened that door without a key before the robbery?

A. No, I tried. I had to break a window for some American fliers, not too long before that.

Q. To get in? A. To get in, yes.

The Court: I will have to ask you to go back, because as soon as you come up here, the witness talks to you.

Mr. Miller: I will get back here.

Mr. Davis: I wonder if that card could be marked as an exhibit.

The Court: All right.

The Clerk: Defendant's Exhibit A, marked for identification.

(Whereupon plastic card referred to and described above was marked Defendant's Exhibit A for identification only.)

Q. (By Mr. Miller): Now, you stated, Mrs. Keene, you called Mr. Farquhar to accompany you to the bank that morning. You recall why you didn't go to the bank, or did you go to the [74] bank?

(Testimony of Evelyn Keene.)

A. Time had gone by so quickly that, and we hadn't completed enough of our report to make a deposit, we could have made a partial deposit, but we didn't.

Q. That Saturday morning?

A. No, not that Saturday morning.

Q. I am talking about Saturday when you called Mr. Farquhar to come over to accompany you to the bank. Did you go to the bank? A. No.

Q. And why didn't you go to the bank?

A. I found out they were closed on Saturdays.

Q. Did you call the bank?

A. Yes, I called the Bank of America in Alameda.

Q. You asked them if they would take a deposit?

A. Yes, sir, I did.

Q. And what was their reply?

A. That their locks were secured for the week end and they could not, would not be responsible for a deposit.

The Court: Was this before you called Mr. Farquhar?

The Witness: No, sir, this was after I discovered the banks were closed. I wouldn't have called Mr. Farquhar if I had known the banks were closed on Saturday.

The Court: But when Mr. Farquhar came, the box was opened and the money wasn't there, was there any occasion for [75] calling the bank then? I don't understand the sequence.

(Testimony of Evelyn Keene.)

The Witness: Well, he is questioning me about——

The Court: He wants to know why you didn't put the money in the bank Saturday. You say you telephoned the bank and found the bank wouldn't accept a deposit. What I am trying to find out, when was that telephone call?

The Witness: Like to restate your question, please, Mr. Miller.

The Court: No, just answer my question. You just said you telephoned to the bank on Saturday morning, found that the bank wouldn't accept the deposit because they were not equipped for it. When did you make that telephone call to the bank on Saturday morning?

The Witness: When Mr. Farquhar was en route to the office.

The Court: While he was on the way down?

The Witness: That's right, sir.

The Court: All right.

Q. (By Mr. Miller): That was before you discovered the loss of the money?

A. That's right, sir.

The Court: All right.

Q. (By Mr. Miller): Was the Western Union office at the airport open that Saturday?

A. I don't know, sir; I didn't check.

Q. You didn't go to the Western Union [76] office?

A. No, sir.

Q. Was the Western Union office open on

(Testimony of Evelyn Keene.)

Friday? A. I believe it was, sir.

Q. Yes. And was that office ordinarily open at nights, the Western Union office?

A. Yes, sir; ordinarily is open at night.

Q. Usually stays open all night, is that right?

A. I don't know.

Q. But it would be open at eight o'clock at night?

A. Yes, sir, generally is, because the switch-board is there.

Q. Do you know why Mr. Held was at the office that morning, on Saturday morning?

A. No, sir, I don't recall why Mr. Held came in.  
Mr. Miller: You may cross-examine.

#### Cross-Examination

By Mr. Davis:

Q. Mr. Miller asked you why you needed to call Mr. Held—who was it you called?

A. Mr. Farquhar.

Q. When Mr. Scott was there and why Mr. Scott couldn't have accompanied you to the bank, if Mr. Scott had accompanied you to the bank, would there have been anyone there left in charge of the office if you hadn't called Farquhar or Held?

A. Well, sir, it is just unlikely for me to ask my boss to take me to the bank, I guess. [77]

Q. I mean, was there anyone to take charge of the office if you and Mr. Scott had gone to the bank together?

(Testimony of Evelyn Keene.)

A. Well, we generally lock the office and turn the phones over to the answering service.

Q. You had an answering service?

A. That is right, sir.

Q. Had Mr. Scott ever accompanied you to the bank when you made a deposit?

A. No, sir, not that I recall. He may have, but not that I recall.

Q. Had Mr. Farquhar ever accompanied you before to the bank when you made a deposit?

A. I don't remember.

Q. As a matter of fact, up to this time, had you ever made any substantial deposits at any other time?

A. I had made some deposits, I don't remember the amount. Mr. Maxwell, who was IMATA's employee at that time, drove me to the bank and I had other people drive me to the bank.

Q. Mr. Maxwell was a former employee, was he?

A. He was an employee of IMATA at that time.

Q. He wasn't an employee at the time this loss occurred?

A. Yes, sir, he was, but he was down in San Diego.

Q. He hadn't been—he wasn't employed at this office, though?

A. That's right. [78]

Q. Now, I think you spoke of janitor's service. Do you recall the janitor, what arrangements there were for janitor service there during the time you were there?

A. Yes, sir, we had Harold Pitts, who is our

(Testimony of Evelyn Keene.)

janitor, and he used to come in in the early morning.

Q. And he would be there for what period of time each day, probably?

A. I don't know, sir. He tried to get his work done before I got there. Occasionally, upon my arrival at the Airport, I would find him just finishing up:

Q. Was he an independent janitor, or was he working for some janitorial service?

A. No, sir, I believe they are city jobs out there, but I am not sure. I don't know whether Mr. Pitts is employed by the City at the Airport and just hires out in his spare time, or just what his arrangement is.

Q. You don't know what the arrangement is?

A. That's right.

Q. Had you had any janitors work there prior to the time Mr. Pitts was employed, or took on that service?

A. Well, as I recall, Mr. Pitts used to work for another janitor who we contracted to do the work.

The Court: I think what he wants to know is while you were did, did you observe any other janitor aside from this Pitts come around and do the work [79]

A. I think, yes, Mr. Baker.

Q. (By Mr. Davis): Baker?

A. Paul Baker.

Q. Yes. And he wasn't any employee any longer during November, 1954, was he?

A. No, sir.

The Court: 1953.



(Testimony of Evelyn Keene.)

Mr. Davis: '53, pardon me.

The Witness: No.

Q. (By Mr. Davis): And had not been for some time? A. No.

Q. Would you say for more than two or three months? A. I don't remember, sir.

Q. Now, the janitor had a key to the office, did he not? A. Yes, sir.

Q. Yes. And Mr. Baker had had a key when he was employed there? A. Yes, sir.

Q. What other employees were there during the time you worked there who were no longer employed by the Company in November of 1952, or 1953?

A. That list you have now, Mr. Davis, is the peak of our employment.

Q. What I mean, those were the ones still there in November of 1953, but had you had any employees during the period of [80] time you were there—— A. No, sir.

Q. ——who were no longer working for the Company? A. No, sir.

Q. At that time. You don't recall that. So outside of this one Mr. Baker, the janitor, or extra janitor, that is the only one you know of who had a key to the office? A. That's right, sir.

Q. And was no longer employed by the Company, is that correct? A. That's right.

Q. Now, when you took the money to the restaurant and bar of this Airline company to put it in the safe, you said that the manager gave you a

(Testimony of Evelyn Keene.)

receipt. Did he receipt just for the package, or did he receipt for the certain number of dollars?

A. I don't recall, sir.

Q. He didn't count the money, did he?

A. No, sir.

Q. In your presence?                      A. No, sir.

Q. No. So as far as you know, he couldn't very well have given you a receipt for an exact number of dollars and cents?

A. No, sir, unless I told him how much was in the bag.

Q. That's right. And at that time, it was in a canvas bag, and how was that bag fastened? [81]

A. The canvas bag was in a manila envelope.

Q. I mean how was the bag itself fastened, tied with a string?                      A. I don't recall.

Q. Sealed with wax or anything?

A. No, it wasn't sealed.

Q. Wasn't sealed. And then in a manila envelope, and was that sealed?

A. I believe it was, sir.

Q. And when you got it back you think it was sealed, too?                      A. Yes.

Q. And that bag was, or I mean that bag or envelope, whatever you want to call it, with the money in it, was received back by you about what time on the morning of the 27th?

A. I don't recall.

Q. Was it just before noon?

A. Yes, sir.

Q. Was it before ten o'clock, you think?

(Testimony of Evelyn Keene.)

A. I don't recall, sir.

Q. I see. And after it was brought back to the office—Now, up to that time, you hadn't made any real accurate account of it, had you?

A. No, sir.

Q. You were only estimating?

A. That's right. [82]

Q. And then it was on Friday that you and—or Mr. Scott particularly, went through the detail of trying to find out exactly how much money was there?

A. No, Mr. Scott never tried to find out exactly how much money was there, Mr. Davis.

Q. Oh, I thought you said Mr. Scott was counting?

A. No, he was helping me with my cash report. By that, I mean these tickets have to be listed in numerical order, and to straighten them out and put them in order.

Q. Who was it that counted the money, actually counted it to see how much was there?

A. Mr. Farquhar and Mr. Scott.

Q. Mr. Farquhar and Mr. Scott. Well, had Mr. Scott made one or two counts before Mr. Farquhar came in, if you recall?

A. I recall he made a count by accounting, but it was in error.

Q. It didn't check out with the amount that your records showed ought to be there, is that it?

A. I don't believe I am in a position to answer

(Testimony of Evelyn Keene.)

that, because it was between Mr. Farquhar and Mr. Scott.

Q. I see. But anyway, that was your—I mean, that was the general idea, there was some occasion why they wanted to recount it?

A. Yes.

Q. To bring it out even with the total that you had compiled as the amount that ought to be [83] there?

A. That isn't—first trying to come to a total.

Q. What?

A. I never came to a total amount.

Q. You hadn't yet completed your records and didn't do that until the following Saturday, or sometime?

A. It was several days later when Mr. Tyrell came out from Washington, D. C.

Q. I see. So you hadn't yet, on Friday evening, you hadn't determined exactly how much money ought to be there?

A. No, sir.

Q. I get it.

Now, you were one of the employees at the time of this loss, and under the provisions of the Bond that was executed by the defendant, if there was—if this lost cash, or any part of it was by reason of any dishonesty on your part, then the bonding company is liable. So I will ask you: Did you personally take this money, or any part of it?

A. No, sir.

Q. Do you know who did?

A. No, sir.

Q. Do you know about what—how long after this

(Testimony of Evelyn Keene.)

loss occurred that your father-in-law attempted to open this door and did open it by the use of this plastic card?

A. No, sir.

Q. Was it a month, or a week, or a few days, or what? [84]

A. I can't answer that, Mr. Davis, because I don't remember when it was. I can just say just shortly afterwards.

Q. Shortly afterwards? A. Yes.

Q. Would it be——

A. Day or weeks, I wouldn't know.

Q. You think it would be before Christmas of that year?

A. I don't remember, Mr. Davis.

Q. I see.

A. I would venture to say, but I couldn't prove it.

Q. Had your father-in-law driven you to the office that morning?

A. No, sir, my husband took me to work in the morning.

Q. How did the father-in-law happen to be there, that is what I am getting at.

A. It was probably some Saturday morning, or something, that he did it, when my husband went to work and I had a couple of things to do, either to open and to check the mail, see if any checks arrived, or something.

Q. Where did you live at that time?

A. Alameda.

Q. In Alameda. And your husband worked in

(Testimony of Evelyn Keene.)

Oakland?           A. That's right.

Q. In what place in Oakland?

A. H. C. Capwells. [85]

Q. That is a——

A. A department store.

Q. Near Broadway and Fourteenth, isn't it?

A. Twentieth and Broadway and—yes.

Q. Twentieth and Broadway, yes. Your husband had to be to work early on Saturday morning, as well as other days of the week?

A. That's right, sir.

Q. You did not need to be to work at this office on Saturdays as early as the other days, is that right?

A. I didn't have to work on Saturdays, as a general rule.

Q. I see. As a general rule; so on some mornings when your husband would go to work early, you had some little work to do, you would have your father-in-law take you later in the day?

A. That is right, Mr. Davis.

Q. That is the way your father-in-law happened to be driving you down that day?

A. It could very well have been, yes, sir.

Q. I see.

Now, I believe there was some evidence here that the cash box keys were in your desk, is that correct?

A. No, sir.

Q. Where were those keys?

A. As I understand it, they were in the spare desk. [86]



(Testimony of Evelyn Keene.)

Q. In the spare desk? I see. How many keys were there that would open this box, do you know?

A. I wouldn't know that, Mr. Davis.

Q. I see. Had you ever opened the box yourself?

A. I may have, I may not have. I don't remember.

Q. I see. How many of these cash boxes, as you recall, were kept in the office from time to time, brought in and sent out with a different salesman?

A. Of course, only two stay in my mind, one I had—no, that came afterwards. Only one that I know of.

Q. This was the only one they had around the office?

A. May not be, but that is the only one I know of right now.

Q. Yes. Could you describe the kind of key that was used to open that box?

A. Yes, they are gray metal, I suppose they are steel, and they are flat. They look like an inter-safe key.

Q. Just a flat—— A. Gray key.

Q. Not ribbed or corrugated?

A. No, sir, just cut out, stamped out.

Q. Just a few notches on the one side. I think that is all.

The Court: Is that all?

Mr. Miller: Just to clear up one point. [87]

(Testimony of Evelyn Keene.)

Redirect Examination

By Mr. Miller:

Q. Mrs. Keene, on Wednesday night when you took the money to the telegraph office and ascertained that it would cost, as you expressed it, a considerable amount, didn't you at that time tell the telegraph company how much there was?

A. Well, yes, I had to tell her how much it was in order for her to arrive at the cost.

Q. Yes. So that at that time the amount that you had had been counted, is that right?

A. The amount in the bag had been counted that we were going to send.

Q. Yes. So that when you answered Mr. Davis' question, about the amount, it hadn't been accurately counted, you didn't mean it hadn't accurately been counted up to Wednesday night, at least, is that right?

A. That is right.

Q. So that at that time you knew how much there was, and when you put it in Mr. Herman's safe at the airport, the Transocean safe, you knew how much there was because you had just come from the telegraph office?

A. Yes, that is right, sir, but I don't know how much it is now.

Q. No, but at that time you knew how much there was?

A. At that time. [88]

The Court: Is that all of this witness? Then we will take a recess until two o'clock.

(Whereupon an adjournment was taken until 2:00 o'clock p.m. this date.) [88A]

February 17, 1955, 2:00 P.M.

Mr. Davis: May it please the Court, I would like to recall Mrs. Keene for a couple more questions on cross-examination.

The Court: All right.

EVELYN KEENE

recalled as a witness on behalf of the plaintiff, being previously duly sworn, resumed the stand and testified as follows:

Further Recross-Examination

By Mr. Davis:

Q. Mrs. Keene, in response to my question as to the employees who had worked for Independent Military Air Transport Association during the time you were there and who were no longer with the Association in November of 1953, I believe that there was one whose name you didn't mention.

A. Yes, there was a Mr. Bill Drumm.

Q. How long had he worked there, do you know?

A. I don't know the term of his employment, maybe three or four months, something like that.

Q. And he left about what time?

A. Oh, probably in September.

Q. Of '53? [89] A. Yes, sir.

Q. Yes. At least not later than October, 1953.

A. At least not later.

Q. Did he have a key to the office during the time he was there? A. Yes, sir, he did.

(Testimony of Evelyn Keene.)

Q. And did he at any time while he was working there have any keys made, do you know?

A. Yes, Mr. Scott asked him to have some keys made.

Q. Some extra keys?           A. Yes, uh-huh.

Q. Now, was there ever an occasion when you came to the office in the morning and found either the front or the back door unlocked?

A. Several times, sir.

Q. And did you ever speak to anyone about that?

A. Yes, I did, the janitor.

Q. To the janitor?

A. Yes. I assumed it was he who left the doors open.

Q. Which door would be most frequently left unlocked?

A. The rear door going into the hangar.

Q. I see. Was there ever any occasions when you found the front door unlocked in the morning?

A. Occasionally, but not as often.

Q. Not as often. That rear door was—what kind of a lock [90] was on it?

A. It wasn't exactly a lock, sir, had a bolt you pulled and went into a wooden slot, the wooden slot itself is broken partly, I mean, the hole that was bored where the bolt goes through, you could see where the wood had been sort of gnawed away, that was the only way to secure that door.

Q. Did that door open in towards the office, or did it open outward?

A. It opened outward, sir.

(Testimony of Evelyn Keene.)

Q. Yes. And what was on the other side of that door when you went through it from the rear office, what you call the inside office?

A. I don't quite understand, Mr. Davis.

Q. I mean, did that door open out on to a vacant lot, a street or alley or what?

A. No, sir, that door opened into the hangar.

Q. Into the hangar? A. Yes.

Q. And this office was occupied, the rear of this office had a common wall with that hangar, did it not? A. Yes, that's right.

Q. Yes. And that hangar was, was that hangar enclosed?

A. No, sir, the hangar does have door that will close but it was open on both ends. [91]

Q. Both ends?

A. So you can move airplanes in and out. It is a storage hangar.

Q. When you spoke to the janitor about leaving the doors unlocked, did he ever admit he had done that?

A. I used to say, "Harold, you left the doors open again. Would you please be more careful next time?" "Yes, I will, Mike." And I would let it go at that.

Mr. Davis: I think that is all.

The Court: Anything else?

Mr. Miller: Just one question.

(Testimony of Evelyn Keene.)

Redirect Examination

By Mr. Miller:

Q. This hangar that Mr. Davis has asked about, was that inside of an enclosed closure or fence?

A. It's the same place that our lean-to offices are in, it is the same building.

Q. Yes, but I mean there is a fence between the hangar and the public street, isn't there?

A. No, sir, there is a fence but they don't close it, that is where you drive into the airport. That is opened all the time.

Q. So any one of the general public could drive into the hangar or walk into the hangar?

A. That's right. [92]

Q. Right off the public street?

A. Right off the street there, uh-huh.

Q. In other words, there is no—there is a fence there but there is a gate and a fence?

A. I believe there is a gate and fence, but I have never seen it closed. That is where the delivery trucks and the freight pickup for United go through there.

Q. And it is left open all night long?

A. Yes, sir, to my knowledge it is left open all night long.

Q. Yes.

Mr. Miller: No further questions.

The Court: Is that all?

Mr. Davis: That is all.

Mr. Miller: Inspector Mallon.



ALVIN J. MALLON

was called as a witness on behalf of the plaintiff, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court.

The Witness: Alvin J. Mallon.

Direct Examination

By Mr. Miller:

Q. You're an Inspector of the Oakland Police Department? [93]           A. That's correct.

Q. How long have you been with the Oakland Police Department?

A. Fifteen years, four of which were in the service.

Q. When you say in the service, service of the United States?           A. Right.

Q. Yes. And for how many of those years have you been in the rating or classification of Inspector?

A. Five years.

Q. And in that position have you had occasion to investigate robberies and thefts at frequent intervals?           A. I have.

Q. For how long have you been engaged in the investigation of robberies and burglaries, that type of offense?

A. Well, we have different details. The detail I am working on and have been for the past year and a half is called the grand theft detail.

Q. Yes.

(Testimony of Alvin J. Mallon.)

A. That is the type of detail which would handle this type of case.

Q. Have you been on that for about a year and a half?      A. About a year and a half.

Q. During your time with the Oakland Police Department have you had occasion to attend any police training schools?      A. Yes, I have.

Q. Will you tell us what training schools you have attended? [94]

A. Well, I have gone to several schools within the Department and some which were conducted by the F.B.I., within the Department, and California Police Officers Training School, which was a one week course at the University of California.

Q. Did those courses, or any of them, include training in the investigation of this type of offense we are talking about here?

A. Well, they included thefts, not this particular type.

Q. Yes. Did they include training in investigative methods?      A. Yes, they did.

Q. Did you in your capacity as an Inspector for the Oakland Police Department have occasion to investigate the theft which occurred on either November 27 or 28, 1953, at the offices of Independent Military Air Transport Association at the Oakland Airport, Oakland?

A. Yes, sir, myself and Inspector Eric Gustavson.

Q. Was Inspector Gustavson with you when you went to investigate that?      A. Yes, he was.

(Testimony of Alvin J. Mallon.)

Q. And did you stay together during the course of the investigation?

A. Yes, about 90 per cent of the time.

Q. I will ask you, you have with you some papers. Will you tell us what those are? [95]

A. These are more or less a resume of what we did in the case and things that were said to us, told us by the employees.

Q. Was that resume made by you from your own report in the case? A. Yes, it was.

Q. You, as a result of your investigation, did make a report, is that right?

A. We did, yes.

Q. You have made a resume from that report yourself and that's the papers you are referring to at this time?

A. Some of this may have been typed by a stenographer, I am not sure of that.

Q. But it was taken from your own report?

A. That's right.

Q. Do you recall what time of day and the hour of the day that you were called to the Oakland Airport?

A. Well, I was over, my wife and Inspector Gustavson's wife, the four of us were together at Inspector Gustavson's house in Oakland on Saturday evening, and we received a call, in fact Inspector Gustavson received a call about ten o'clock at night that there had been a large theft at Oakland Airport and for us—the following day was our

(Testimony of Alvin J. Mallon.)

day off—we went to the Airport the following morning.

Q. Yes, so that you got there on Sunday morning?  
A. That's right. [96]

Q. Had there been any investigation made by anyone in the Police Department prior to that time?

A. Yes, there had been an officer sent first to make an official police report, and we have technicians who are, get special schooling in lifting fingerprints and photography and things like that, and they are sent to the scene. Officer Lucas was sent there after the officer made his initial report.

Q. And do those technicians that make an investigation, such as the fingerprint men, do they report directly to you their findings?

A. They make a sheet, which is sent to us.

Q. And you received from the technicians that investigated in this case a report of their findings, did you?  
A. Right.

Q. Well, Inspector, will you relate to us the conditions which you found in this office at the Airport and just what you and Inspector Gustavson did from the time you got there in the investigation of this robbery?

A. Could I narrate what we did?

Q. Yes, narrate what you did as well as you can remember it, and if we need more we can ask questions. Just narrate what you and Inspector Gustavson did?

The Court: Can't you shorten that, coun-

(Testimony of Alvin J. Mallon.)

sel? What is admissible is only something that the—— [97]

Mr. Miller: Yes.

The Court: ——witness found there and saw.

Mr. Miller: I will try to narrow it, your Honor.

Q. When you got there did you make a physical examination of the premises?

A. General physical examination, yes.

Q. Yes. And did you observe any evidence that there had been any forcible entry of those premises?

A. Not at that time.

Q. Did you find any evidence at any later time to indicate forcible entry? A. No, we did not.

Q. Did the report made to you by the technician who had checked before hand——

Mr. Davis: We object to what the report recites to him by the technician, entirely hearsay.

The Court: What are you going to ask him?

Mr. Miller: I was going to ask him if the reports made to him in connection with this investigation by the technical experts who investigated this indicated any forcible entry of the premises.

Mr. Davis: I object to what the technician's report shows.

The Court: Why don't you—this is not something that's foreign to the Court—ask him what he found as to [98] the condition of the various things. I have read the complaint, I know what the report is, that is attached to the complaint and why don't you ask the witness what he found with respect to the door and the desk and box, and so forth.



(Testimony of Alvin J. Mallon.)

Mr. Miller: I will.

Q. Did you find any evidence that there had been any forcible entry through the front door of those premises? A. I did not.

Q. Did you, in connection with your investigation, endeavor to open that front door without a key? A. I don't believe I did, no.

Q. Did Inspector Gustavson?

A. I don't recall whether he did or not. We looked at the door.

Q. You examined the door? A. Yes.

Q. From your examination of that door did you ascertain whether or not it could be opened without a key? A. It is my opinion it couldn't be.

Q. What was the condition of the door which led you to that opinion, will you describe it?

A. Well, when a door and the door jam come together, it is possible to take a laminated card, thin type, and by pushing the door very gently and keep jamming this card into [99] the door, you can slip the lock back and sometimes open the door; but in this door, there was a material, either wood or metal, I am not sure, that protruded about a half-inch past the door jam which, you have to, in putting a laminated card in there, make a ninety degree angle to hit the lock. To me it was almost impossible to do that.

Q. In your opinion it would be impossible?

A. In my opinion it would be impossible.

Q. That was from your examination of the door?

A. That's right.



(Testimony of Alvin J. Mallon.)

Q. Did you find a window that was unlocked?

A. Yes, I did.

Mr. Davis: Wait a minute. You weren't there until Sunday morning?

The Witness: That's right.

Mr. Davis: This loss is supposed to have occurred sometime Friday night.

The Court: Well, the witness can tell what he found when he was there.

Mr. Davis: I mean, whether the window was locked or unlocked when he got there, I don't believe would have any bearing on the case.

The Court: Well, I have read this complaint and the documents attached to it, and there are some other events from which a person can draw conclusion, no matter when he [100] looked at it, the entry was not by any window.

Mr. Miller: I think the question is proper.

The Court: I will overrule the objection.

Q. (By Mr. Miller): On Sunday morning when you got there, was one of the windows unlocked?

A. I don't know whether it was unlocked. The window was pointed out to me and I examined the window.

Q. You looked at the window? A. Yes.

Q. And what condition did you find as to the window, clean or dirty or what?

A. The window was very dirty and dusty, and I understand——

Mr. Davis: No.

(Testimony of Alvin J. Mallon.)

Q. (By Mr. Miller): What did you see? Were there any cobwebs on the window?

A. At that time I didn't notice, but I subsequently found, by talking to the technician——

Mr. Davis: We don't want to know what he was told by the technician.

The Court: He said that he talked to the technician and subsequently you looked at it, I understood you to say, or did I?

The Witness: I didn't look at it for that specific thing until——

Mr. Miller: Yes. When did you talk to the technician? [101]

A. I believe it was the following day.

Q. Where was that conversation, if you recall?

A. I don't recall. I believe it was in the City Hall, but I am not positive.

Q. Was it at the City Hall? A. Could be.

Q. Was Inspector Gustavson there with you?

A. I don't recall.

Q. What was the technician's name?

A. Lucas.

Q. Lucas. Did you talk to him about this office at the Airport? A. Yes, I did.

Q. What did he say to you at that time?

Mr. Davis: We object to what he said, your Honor.

The Court: Yes.

Mr. Davis: Hearsay.

Q. (By Mr. Miller): Now, coming back to the day you went out to the office you looked at these

(Testimony of Alvin J. Mallon.)

windows?           A. Yes, I did.

Q. And you don't recall whether either one of them was opened at that time?

A. I don't recall, no.

Q. Did you examine the back door?

A. I did. [102]

Q. Did you observe the type of lock that was on that back door?           A. Bolt lock on the door.

Q. Does that bolt go into the woodwork, or does the bolt fit into a metal socket?

A. I am not sure now, couldn't state for sure.

Q. Did you endeavor to open that door while the bolt was on?           A. I believe I did, yes.

Q. Were you able to open it while it was bolted?

A. No, we weren't.

Q. Did you see this cash box from which the money was supposed to have been taken?

A. Yes, I did.

Q. Did you observe that cash box?

A. I looked at it, I didn't—I don't believe I touched it, which had been dusted for fingerprints and the powder was still on the box so I didn't touch it.

Q. You didn't touch it at that time?

A. No.

Q. Did you at a later time take that cash box to the police station at Oakland?

A. Yes, we did.

Q. Did you there endeavor to open it?

A. The cash box was first brought to the criminologist, who is the criminologist for the Police

(Testimony of Alvin J. Mallon.)

Department, and he [103] attempted to lift prints off the cash box, and when he couldn't lift—first of all, when we brought the cash box in the cash box was locked and the technician wanted, I mean the criminologist wanted the cash box opened so he could dust, and they tried to open it with pick locks, couldn't had to quit that, and then it was turned over to the criminologist and he dusted for prints.

The Court: Any evidence this box had been forcibly opened?

The Witness: No, no evidence.

Q. (By Mr. Miller): Did you examine the desk out in this office in which the cash box was supposed to have been locked? A. Yes, we did.

Q. Did you find any evidence that the desk had been forcibly opened?

A. It was not forcibly opened.

Q. Did you personally question the employees of Independent Military Air Transport Association?

A. Either I did or Inspector Gustavson did.

Q. And what employees, if you remember, did you question?

A. Mr. Scott, Mrs. Keene, Mr. Farquhar, Mr. Held, Mr. Pitts, the janitor, Mr. Baker. I talked to the guards I talked to the service station attendant across the street. I believe that is about all. May have talked to a couple more. [104]

The Court: Does the report show whether any fingerprints were found?

(Testimony of Alvin J. Mallon.)

The Witness: No fingerprints were found; there were smudges, Judge.

The Court: Neither prints on the desk or the cash box?

The Witness: That's right.

Q. (By Mr. Miller): In any of your investigations did you receive or find any evidence that there had been any forcible entry of either the office, the desk, or the cash box? A. We did not.

Q. I think you have testified that you later inspected those windows again. Did you find any evidence as to whether any entry had been made into that office through the windows?

A. Upon checking it, from what I found, I couldn't see how anybody could have gotten in there.

Q. What was the reason for that?

A. Because there was dust along the window, window sill, and anybody coming in would have brushed up against that and knocked some of the dust off. Everything seemed to be undisturbed around the window, appearing like it hadn't been opened for some time.

Q. Did you question any of these witnesses on what we call the lie detector?

A. Yes, we did. [105]

Q. And which ones were questioned on the lie detector?

A. Mr. Scott, Mr. Farquhar, Mrs. Keene, Mr. Held, Mr. Pitts, the janitor, and Mr. Baker.

Q. Were any of those lie detector examinations inconclusive as to results?



(Testimony of Alvin J. Mallon.)

Mr. Davis: We object to what the lie detector showed.

The Court: Yes, I will sustain the objection.

Q. (By Mr. Miller): How many days did you spend on this investigation, if you recall?

The Court: I take it under the pleadings in this case and under the provisions of the policy it isn't necessary that the plaintiff, in order to recover, would have to show that any particular person was guilty of the offense?

Mr. Davis: No. They must, however, show that some one employee, one or more employees——

Mr. Miller: Reasonable evidence.

Mr. Davis: ——was guilty of it.

Mr. Miller: Reasonable evidence.

Mr. Davis: They do not have to identify a particular employee, but they have to furnish convincing evidence that it must have been.

Mr. Miller: I object to the use of convincing evidence. The policy says reasonable.

The Court: I have tried to apply this rule to certain classifications, but the appellate court wouldn't go with it. [106] I think you have to stick to the old-fashioned rule of the preponderance of the evidence.

Mr. Davis: I think that is right, yes.

Q. (By Mr. Miller): About how long were you engaged in this investigation?

A. Offhand I would say ten days.

Q. About ten days?           A. Yes.

Q. From your experience as a police officer and



(Testimony of Alvin J. Mallon.)

as a police inspector, and from your investigation of this incident, your physical investigation, your questioning of the witnesses, what is your conclusion as to the probable cause of this loss?

Mr. Davis: Now, wait a minute. We object to that on the grounds it calls for a conclusion, not a matter of expert opinion, up to the Court to determine.

The Court: I am inclined to think counsel is right, Mr. Miller.

Mr. Miller: Your Honor, I think here's a man who is certainly engaged, and has been for a number of years investigating, as an officer, of this type of offense. I think he is entitled to draw his conclusions as to whether, from that investigation as an expert, we feel he is an expert in the field of criminal investigation.

The Court: Well, I am not in any way derogating against [107] the officer's ability to perform these services, but if the Court has evidence that such and such was the condition of the box, that such and such was the condition of the door, such and such was the condition of a window, I think in that respect the Court would be just as good an expert as any other expert, because after all it is just evidence, and what inferences would be drawn from that are usually within the province of the fact-finder. I don't think it would add anything.

Mr. Miller: I will withdraw the question, your Honor.

(Testimony of Alvin J. Mallon.)

You may cross-examine. We are perfectly content to let the Court draw his own conclusions.

### Cross-Examination

By Mr. Davis:

Q. Did you attempt to open this door by the use of a plastic card and shaking?

A. I didn't, no.

Q. You didn't attempt it? A. No.

Q. Did anyone in your presence attempt to open it in such a manner? A. Not that I recall.

Q. I see. While you were there did you, anyone demonstrate to you how that desk could be opened without the use of a key? [108] A. No.

Q. Anyone call your attention to the fact that it could be opened without the use of a key?

A. I don't think it was on that day, I think later Mrs. Keene told us she had opened it from underneath.

Q. But she didn't show you how she had done it?

A. No.

Q. You didn't check to see whether it could be done? A. No.

Q. This back door that opened outwardly from what has been designated or referred to as the inside room, opened into this hangar, is that correct?

A. Yes, sir.

Q. Yes. Now, did you observe whether there was any particular space between that door and the door frame when the door was closed?

(Testimony of Alvin J. Mallon.)

A. Well, if I did it was not obvious there was any space. I don't recall looking for that particularly.

Q. Did you observe that there was, the wood in which the hole was bored that this bolt slipped into was badly worn?

A. I didn't know that, no, sir.

Q. You didn't notice that. Did you pay any particular attention to that door itself?

A. I don't recall whether we did. I know Inspector Gustavson went on the outside, shook the door real hard several times and it was still solid. We felt if anybody [109] would open it it would break the jam or something.

Q. When a door opens outwardly, if there is any particular space between the door and the frame when it is closed, it is not very difficult for someone with a pen knife or some other sharp metal instrument to slip the bolt, is it?

A. I imagine so.

Q. And if one did enter through that rear door, shove the bolt shut after they were in and walk out through the front door and lock it without using a key or anything?

A. It is possible.

Q. Yes. Now, if this tin box—I believe it was described here by one of the witnesses as being a box about three inches deep, and I have forgotten what the other dimensions were, eight, ten inches long and six inches wide, something like that, you remember that box?

A. I remember the box, yes.

(Testimony of Alvin J. Mallon.)

Q. Would that be about the size of it?

A. Might be a little bigger than that.

Q. A little bigger than that. That is a very ordinary box, isn't it?      A. Yes, it is.

Q. Rather common. And the keys that are used in those are not very complicated, are they?

A. No, just a little small key.

Q. Yes. I mean, a great many little keys would open the locks [110] in those boxes?

A. I don't know about that.

Q. For example, something like suitcase locks and things like that where one key might open a half-dozen that would be picked up in the immediate vicinity?

The Court: I don't think that would be true, counsel, you would have to get a lot of evidence on that.

Mr. Davis: Funny thing, your Honor, I have one key that will open three suitcases.

The Court: You better get a new key, then.

Mr. Davis: I lost the keys to two of them and I was going to get them made and tried the key of another suit case.

The Court: I suppose they probably have skeleton keys for those kinds of locks just as there are skeleton keys for door locks. You might try one hundred keys and not get one that would open the lock. It would be hard to say, isn't that right?

The Witness: Yes, sir, this lock was—this box was pretty difficult to open because when it was brought in it was locked and it was Lieutenant

(Testimony of Alvin J. Mallon.)

Waters who was in charge of the case over us and he had some pick locks and attempted to open the box with a pick lock and couldn't do it.

Q. (By Mr. Davis): What do you mean by that, pick locks?

A. They are long keys about this long (indicating) in all different shapes that you stick in there. [111]

The Court: Try to find the right combination?

Mr. Davis: Like a hairpin.

The Court: All different shapes and fit maybe one or two at a time?

Mr. Davis: Like an old lady who uses a hairpin to open the locks.

The Witness: Yes.

Q. (By Mr. Davis): You said something about you questioned the guards. Which guards were they?

A. The Airport guards. The City of Oakland has these guards that patrol the area surrounding the Airport.

Q. I see.

A. And each one had a specific beat, and we asked them if they had noticed anything peculiar that evening.

Q. How many of those guards are there around the Airport, do you know?

A. I think there are three or four on in the day; in the evening I am not sure.

Q. Covers the whole Airport area?



(Testimony of Alvin J. Mallon.)

A. All except about that area where they have their own private guards.

Q. Well, there were no private guards around the—— A. Not around this area, no.

Q. And what is the acreage of that Airport proper, or the dimensions of it? [112]

A. I wouldn't have any idea.

Q. Several miles long?

A. Several miles, yes.

Q. How wide, a mile wide?

A. Easily that much.

Q. Yes. Three guards couldn't be watching every place at all times?

A. They have a jeep, too, jeep patrol.

Q. Couldn't cover that whole area?

A. That is right.

Q. They hadn't noticed any suspicious characters around? A. No.

Q. Now, you say there were no prints found on the desk or the cash box. You heard evidence here, I believe, of prior witnesses that they had taken, they had unlocked the desk and taken the cash box out of the desk on Friday morning. Didn't you find their prints?

A. I mean by prints something that can be used for identification. There were smudges.

Q. Oh, I see.

A. Smudges on the box, but there were no prints that could be used to——

Q. There was no evidence anybody had wiped the box clean to eliminate those?



(Testimony of Alvin J. Mallon.)

A. No. What I meant by prints, something used as evidence. [113]

Q. You couldn't identify them, you couldn't bring them out enough——

A. That is correct.

Q. ——to be able to match them up with anybody's prints?

Mr. Davis: I think that is all.

The Court: Is that all?

Mr. Miller: That is all. Thank you.

(Witness excused.)

Mr. Miller: Inspector Gustavson.

### ERIC GUSTAVSON

was called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court.

The Witness: Eric Gustavson, G-u-s-t-a-v-s-o-n.

### Direct Examination

By Mr. Miller:

Q. You're an Inspector of the Oakland Police Department? A. I am.

Q. How long have you been with the Oakland Police Department? A. 14 years.

Q. How long have you been an Inspector?

A. I believe it is about 7 years now.

Q. Did you go with Inspector Mallon to investigate this theft [114] that occurred at the Oakland

(Testimony of Eric Gustavson.)

Airport in November of 1953? A. Yes, I did.

Q. When you went there did you examine the premises? A. I did.

Q. Did you examine the front door?

A. Yes, I did.

Q. Did you endeavor to open that front door without a key?

A. Yes, it was shook quite a bit trying to open it, the door, but that was about all that was done.

Q. Did you endeavor to slip the lock with a plastic card?

A. Well, I would say in my opinion——

Mr. Davis: Didn't ask for his opinion.

Q. (By Mr. Miller): Did you try?

A. Did I? No, sir.

Q. From your examination of that door think it would be possible to slip it?

A. I don't think so.

Q. Was that because the way the door closes?

A. That is correct.

Q. Will you describe why?

A. Well, the door comes up against a—I would say a half-inch to three-quarter inch jam, and I believe it is metal—I am not positive of that—but in order to be able to insert one of these plastic cards that has been described, it is necessary that there be a space between the [115] jam and the door frame itself so that the card can, will go between the jam and the frame and up to the door where the lock goes into the slot. This particular jam that is up against the door in question has been

(Testimony of Eric Gustavson.)

painted so many times that I would say there is at least one-eighth of an inch of paint on it and absolutely no crack between the jam and the door frame itself. The only way you could get a card in there would be that it would have to go straight in and make a complete 90 degree bend to get into where the portion of the lock goes into the frame so that it would be almost impossible to get a plastic card at those angles and still maneuver it to the point where you could slip the lock.

Q. Now, did you examine the windows in the office?      A. Yes, I did.

Q. Was there any evidence at all of any forcible entry through those windows?

A. There was not.

Q. Did you examine the back door?

A. I did.

Q. Was there any evidence of any forceful entry through that back door?

A. There was not.

Q. Did you attempt to open that back door when it was bolted without releasing the bolt? [116]

A. Yes, we attempted to pull the door open and it would not open, of course, with the bolt in position. We removed the bolt, that is, slid the bolt back, and even with the bolt out the door is—apparently the building has settled, anything that would cause it to jam—it was very, very difficult to open even with the bolt slipped out of the hole that was bored for it to slide into.

(Testimony of Eric Gustavson.)

Q. Did you examine the desk? A. Yes.

Q. Was there any evidence of any forceful entry in that desk?

A. There was not. Speaking of the desk where the money was supposedly left?

The Court: Yes, I take it that is what he is asking,

The Witness: Yes.

Q. (By Mr. Miller): I wasn't sure I got that last.

A. I say, talking of the desk where the money box was left?

Q. Yes, the desk in the rear office where the money box, where you were told the money box had been left?

A. That is right, there was no evidence of any forceful entry made on the desk.

Q. Any evidence of any forceful entry of the other two desks in the office?

A. Yes, Mrs. Keene's desk, there was considerable chopping or pounding or something had gone on to attempt to open one [117] or two, I don't remember now, the drawers in Mrs. Keene's desk, and she explained to us that she herself, and I believe Mr. Pitts, the janitor, had attempted to open it on one occasion when she had lost or left her keys at home.

Q. That was her desk?

A. That was her desk.

Q. You inquired about that and that was the explanation? A. That is correct.

(Testimony of Eric Gustavson.)

Q. Yes. Did you examine this cash box?

A. Yes, I examined it.

Q. Any evidence of any forceful breaking of the lock in the cash box?      A. There was not.

Q. Were you present when this cash box was, they endeavored to open that cash box at the Police Department in Oakland?

A. With the picks, yes, I was.

Q. You were present?      A. I was.

Q. And were they able to open it?

A. They were not.

Q. About how long were you in this investigation?

A. I am not too sure. I think Inspector Mallon said ten days; I would say from ten days to two weeks.

Q. And as a result of the police investigation was anyone apprehended and charged with this offense? [118]      A. No, they were not.

Q. From the layout of that office as you observed it, if there had been—if it were night and there were lights on in the office, could you see it from the outside readily?

A. Yes, yes, you could see it from the outside.

Q. Was there a window in the front or just a glass door?

A. No, the entire, about half-way up, I would say, of the wall, the entire wall is small panes of glass in a metal frame.

Q. So that you could readily see into the office



(Testimony of Eric Gustavson.)

from the outside?

A. Yes, you could see in from the outside.

Q. Was there any evidence of any forceful entry through that front window?

A. None whatsoever.

Q. Is there a gasoline service station in the vicinity of that office?

A. Directly across the street.

Q. Directly across the street?

A. That is right.

Q. Do you know if that service station remains open at night?

A. It remains open 24 hours a day.

Q. That is directly across the street from this office?

A. That's right. [119]

Q. Is that a well-lighted service station?

A. Yes, it is very well lighted.

Q. And would the lighting from that service station also light up the area in front of the office?

A. I would say that it would, yes.

Q. Were you with Inspector Mallon when the employees were questioned?

A. Yes, I was.

Q. And do you recall what persons were questioned by you and Inspector Mallon?

A. Yes, Mr. Scott, Mr. Farquhar and Mrs. Keene and Mr. Held and Mr. Pitts, Mr. Baker. I don't recall the guard's name. There were two or three guards from the Airport, and the people at the gas station and several other janitors, Mr. Mallon men-



(Testimony of Eric Gustavson.)

tioned, the names I don't recall.

Mr. Miller: You may cross-examine.

Cross-Examination

By Mr. Davis:

Q. This rear room, could that be seen from the street if anyone were in there around the desk from which you were told this money was taken?

A. You mean could someone standing outside the window look in and look into the rear room, is that what you mean?

Q. From the street, I mean.

A. From the street, you mean, across the [120] street?

Q. No, from the front. As I understand it the front of this office building or this lean-to, whatever you want to call it——

A. Yes.

Q. ——fronts on the street?

A. That's right.

Q. Could anyone from the street see into the rear office?           A. I would say yes.

Q. And observe anyone that might be at the desk from which you were told this money was taken?

A. If someone looked through what would be the front wall or which faces the street, yes, they could see into Mr. Scott's office because it is just a wall of glass in between the two offices, that is, oh, I would say three and a half foot wooden wall and

(Testimony of Eric Gustavson.)

the balance of it was glass, and the same with the front.

Q. And the front wall of the building where this front door was was constructed how?

A. Well, as I recall it is constructed of metal. I don't know how to describe it.

Q. Corrugated metal of some kind?

A. Well, I don't recall whether it is corrugated, I think it is a flat metal, but with the metal window sash in it with window panes that are about 12 by 18, or something like that. Maybe smaller. [121]

Q. Does that go clear to the ground?

A. No, they go, I would say three, three and a half feet from the ground. I mean, from the ground up about three or four feet would be solid metal.

Q. Yes.

A. And from there to the ceiling is the window sash. It is a solid wall of window sash.

Q. And is that true on the sides, too?

A. I believe—I am not sure. I believe on the front part there is, I am not too sure.

Q. What is the condition on the side walls there, calling the entrance the front of the building, what is the condition of the side?

A. As I recall, I am not positive, of course, but as I recall both sides are solid. There may be a small portion of what would be, has been described as the front office on the, would be the east side of the building that would be glass, but I am not positive.

Q. Now, where this is located during the night-

(Testimony of Eric Gustavson.)

time would there ordinarily be very much traffic by there or around that vicinity?

A. Truthfully I wouldn't be able to say whether traffic would be heavy or not.

Q. Had you ever been out there at night before this thing occurred? [122]

A. Oh, yes, I have been to the Airport many times at night.

Q. At night did you ever observe whether there was much traffic, is there much going on right through there at that time?

A. Well, that is pretty hard question to answer in this respect, depending upon the flights coming in. It is close to the administration building and depending on the number of flights coming in and going out would control how much traffic was going back and forth.

Q. Would all traffic to and from the main place of departure and the place where planes would come in, passengers pass this particular office?

A. No, they would not pass it. However, the main—the administration building or reception building, whatever you call it at the Airport would be a matter of, roughly speaking, hundred and fifty, maybe two hundred feet east of this lean-to. In other words, it is in the immediate vicinity.

Q. Yes, but going from the administration building getting away from the Airport——

A. You would be leaving the building going in the opposite direction.

(Testimony of Eric Gustavson.)

Q. You wouldn't be coming toward this building?  
A. No, sir.

Q. That is what I am talking about. [123]

A. No.

Q. As far as this gasoline station across the street is concerned, wouldn't it be possible that that might at some times be closed at night a portion of the night?

A. It is possible, however, I don't know.

Q. You don't personally know?

A. No, sir.

Q. Whether it stays open every night or not?

A. That I don't know, no, sir.

Mr. Davis: I think that is all.

### Redirect Examination

By Mr. Miller:

Q. When you questioned the employees of the gasoline station—I understand you questioned those employees, did you not?  
A. Yes, we did.

Q. Did you ascertain from them if——

Mr. Davis: Now, wait a minute——

Q. (By Mr. Miller, continuing): The service station is always open?

Mr. Davis: I object to that on the ground it would be hearsay.

The Court: The witness already has testified that the station is open all night.

(Testimony of Eric Gustavson.)

Mr. Davis: Well, he says now he doesn't [124] know?

The Court: Another witness testified that the gasoline station was open all night.

Mr. Davis: No, he didn't testify from his own knowledge. He says he doesn't know.

The Court: May be true. I say another witness has already testified that the gasoline station is open all night.

Mr. Miller: Well, I will leave it rest there.

Mr. Davis: I didn't hear anyone else testify.

The Court: Yes.

The Witness: All I can say it is advertised it is open 24 hours a day. I don't go out there to see it is open.

Mr. Davis: Yes.

Mr. Miller: That is all.

(Witness excused.)

Mr. Miller: Any more questions of the Inspector?

Mr. Davis: Not that I know of.

Mr. Miller: Plaintiff rests.

Mr. Davis: At this time, your Honor, the defendant would move the case be dismissed on the grounds there is no evidence to establish there is any reasonable grounds for believing that this loss was caused by the dishonesty of any employee of the plaintiff. The plaintiff's own witnesses have testified that these doors could be opened without keys, that the desks could be opened—desk could

be [125] opened without keys, that the box was a very common ordinary box which any flat key would open.

The Court: I don't think there is any such evidence to that.

Mr. Davis: What is that?

The Court: I don't think there is any evidence to the effect this box could be opened by any flat key.

Mr. Davis: Well, that it was a common, flat key.

The Court: Well, common, common type of key.

Mr. Davis: Yes.

The Court: No evidence to show any flat key would open it.

Mr. Davis: I don't mean any flat key, no, but I think it is going a long way on the evidence here to find that any of the employees who had any access at all to this office or building or who had keys to the building were guilty of this crime. I think—I can call the other employees here if your Honor thinks it is necessary. I have here the remaining two employees who have not yet testified.

The Court: Well, the policy says that any dishonest acts committed anywhere by any of the employees acting alone or in collusion with others——

Mr. Davis: That is correct.

The Court: It might not be necessary to prove under the terms of the policy that any specific act took place, even [126] in the premises.

Mr. Davis: Well, of course, there is no evidence of any act anywhere else.



The Court: You can't tell that. All we know is that in the evidence that the box was where the money was placed in the drawer one day and the next day when the box was opened it was empty.

Mr. Davis: That's right.

The Court: Still not necessarily conclusive proof that the money was taken, it was taken on the premises, the box might have been carried away some place else and the money removed and the box brought back again.

Mr. Davis: Oh, I think as far as that is concerned I don't think it makes a bit of difference where the money was taken out of the box, the whole question is by whom. If it were not taken out by an employee, then there is no obligation under the policy.

The Court: Well, it might be a close question. I suppose different triers of the facts might draw different inferences from these circumstances. If it is a close question, then I think it ought to be resolved against the insurance company. If it is a close question.

Mr. Davis: Of course——

The Court: Because that is what the man, the insured pays his premium for, to get some protection. [127]

Mr. Davis: The burden——

The Court: It is just a technical—if the question has to be decided by the court's eye, then I would say the decision would have to go against the insur-

ance company. I am just talking about the evidence that is in now.

Mr. Davis: Yes.

The Court: But if the evidence is reasonably susceptible to an interpretation in favor of the insured, then I think the Court should indulge in that inference. There is no direct evidence, of course, in this case and the question is what are the reasonable inferences to be drawn from the evidence, and, of course, the satisfactory proof to sustain a course of action may result in inferences as well as from actual proof.

In other words, a person might not see another person at a particular place at the time by physical senses, but yet there may be evidence of other circumstances from which the inference can be drawn that the person was there, and those inferences are equally to be considered, properly to be considered, I will say, in determining whether the evidence is sufficient to prove the ultimate fact—— [128]

That is what you have in this case, of course, what is a reasonable inference so far from the evidence produced by the plaintiff. And at this point I would say that there is enough to draw a reasonable inference that this act was committed in some manner by some employee, neither alone or in association with someone else, because you have to engage in assumption of the concurrence of too many factors the other way. You would have to assume, if this act was committed by a stranger, by the way of robbery, that he would have a means of get-

ting into the building, that he would have a means of getting into the desk, and after he did all that, then he would have a way of opening the box without doing violence to it, removing it, putting it back.

Now, to show that, to draw an inference that this was a violent act of an intruder, you have to indulge in a presumption in favor of all those things being so.

Well, I suppose there are very astute burglars today. I read a report not so long ago in a case, criminal case that I had, in which the probation officer referred to the defendant as an expert professional burglar. So I suppose that in that field, as well as in other fields, the authorities recognize experts, too. So that's possible, that there might have been a man, an intruder so expert that he was able to overcome all of these obstacles, the [129] doors, or the windows, the desk, and then the box, itself. Either he was expert enough to have the supplies and equipment to enable him to do all these things without leaving a mark, or that he was able to get possession in some manner of all the necessary keys to all these things, or that he was so familiar with the desk that he was able to open it with it all prearranged in advance; all these circumstances had to combine, that he knew that this box of money was going to be there on that night, and he had all these things, these possibilities open to him and had some knowledge of expertness to do all these things, to accomplish all these things.

Now, that's possible, but what is the reasonable

inference to draw from the facts is before us now; that is all we are concerned with on a motion to dismiss after the plaintiffs' case is in.

You may have something further to say, Mr. Davis; I am not trying to cut you off, but I think while these facts are fresh in our minds, it is better that I state how I feel about it than not say anything to you. There may be some points I have overlooked that you could call my attention to, but I think—it seems to me that on the bare facts as we have them now, it is a reasonable inference.

Mr. Davis: I think possibly I had better call the [130] other witnesses, then.

The Court: Well, you can reserve your motion and put on your further evidence.

Mr. Davis: Yes, I will call Mr. Held.

RICHARD B. HELD

was called as a witness on behalf of the defendant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: State your name to the Court, please.

The Witness: Richard B. Held.

Direct Examination

By Mr. Davis:

Q. Mr. Held, where are you now employed?

A. I work for Travel Tours; it is a travel agency in the Whitcomb Hotel right up here on Ninth, in San Francisco.

Q. On Market Street in San Francisco?

A. Yes, sir.

Q. And your home is where?

A. I live over in Berkeley, 1709 Cedar Street, Berkeley.

Q. Are you married? A. No, I'm single.

Q. And were you employed during the year 1953 by Independent Military Air Transport Association? A. Yes, sir, I was.

Q. When did you go to work for that [131] company? A. In August of 1953.

Q. And you continued working for them for how long?

A. Until, I believe it was March, March of '54.

Q. March of 1954. Were you employed there in November, the week of Thanksgiving in November of 1953? A. Yes, sir.

(Testimony of Richard B. Held.)

Q. Yes. And what were your duties, Mr. Held?

A. Oh, mainly I was in charge of the—what we call the operational end of meeting incoming aircraft and loading outbound aircraft; and when I wasn't doing that, or whatever it was, it was versatile, I would work in the sales end; I was at different camps at different times, too.

Q. Where?

A. I was—I went over to different—like Treasure Island and Parks Air Force Base—it was seldom—selling tickets. Also to help out.

Q. Was your work in the major portion performed at the office, at the Oakland Airport, or elsewhere?      A. At the Oakland Airport.

Q. Yes. Did you have a key to the premises?

A. Yes, sir, I did.

Q. Yes. Were you present in the office at the Oakland Airport on the day and evening, or the day or evening of November 25, which was the day before Thanksgiving?

A. The day before Thanksgiving? [132]

Q. 1953.

A. No, I am not quite clear at this time exactly where I was on that day, because my schedule varied. Sometimes I came in early in the morning to meet airplanes and then went home, and slept odd hours and was back, and at this time I can't recall what I did actually on the day before Thanksgiving.



(Testimony of Richard B. Held.)

Q. Were you there at all on Thanksgiving Day, do you know?

A. Not on Thanksgiving Day, no.

Q. Were you there on Friday morning, the 27th of November, 1953?

A. Yes, I was. Now, let's see, Friday. Yes, I was. I came in actually early in the morning and met some airplanes that were expecting to go to Travis Air Force Base. And, if I remember correctly, it was fogged in up there and had to land at Oakland Airport. So I was—came in early in the morning, and I don't remember the exact time. And I worked up until noon on Friday—yes, Friday noon.

Q. Now, from Friday noon where did you go? You say you worked up to Friday noon. What happened then?

A. Mr. Scott came, let me have the rest of the day off, told me to come back Saturday around noon. And then I took off that afternoon and, oh, I remember, I went over to the cleaners and I bought some shirts; I believe that was established. And then I went home—and I lived with [133] two other fellows in a house at that time—and watched TV that evening and then I went to bed.

Q. Were you back at the airport at or near this office at the Oakland Airport at any time during the night, Friday night, November 26?

A. Friday night, no, sir.

Mr. Miller: 27th, Counsel?

Q. (By Mr. Davis): Or the 27th, I mean?

(Testimony of Richard B. Held.)

A. That is Friday?

Q. That is Friday. A. I was not.

Q. Were you there at any time—how early did you get there on Saturday?

A. Oh, as near as I can recall, I came in, I think, it was around 11:00 or 11:30.

Q. A.M.? A. A.M., yes, sir.

Q. So that you were not near the office from Wednesday (sic) about noon until about 11:00 a.m. on Saturday, is that correct?

A. Yes, sir; as far as I can recall. I am almost positive I was.

Q. Now, Mr. Held, were you there at any time when anyone from the police department made any attempt to open the front door of this office without the use of a key? [134]

A. No; I couldn't say positively on that, that it was a member of the police department.

Q. Was it someone that attempted to open it?

A. Yes; I have been trying to place who it was, but somebody showed us how to take this card and push it between the jamb of the door and if—I tried it, myself; first, I couldn't do it, and then he bent the edges, sort of slide it around between there and I remember particularly that he had to sort of lean on the door to push this card through, and then it would open up. And this guy, I can't remember now, unless it has been passed—no. He did it several times and I tried it and there was somebody else there, but I can't recall at this time who it was.

Q. Did you succeed in opening it?

(Testimony of Richard B. Held.)

A. Yes; I definitely did it myself. I tried the one time with this little calendar card.

Q. Was it with the use of a plastic card?

A. Yes.

Q. Have you that card that we had there? Was that a card similar to the one—it hasn't been introduced—has been marked for identification as Defendants' Exhibit A, was it a card somewhat similar? A. A card similar to that, yes.

Q. Similar to that. You say you finally succeeded, yourself, in opening the door? [135]

A. That's right.

Q. By the use of this card and shaking and manipulating the door without the use of key?

A. You didn't have to shake the door; the main thing was to lean against it, sort of push back along—there is a little edging, I don't know whether that was wood or metal—but you leaned sort of against the door, pushed back; this card would slide in if you bent the edges; it would open it up. Just fooling around afterwards.

Q. In other words, you bent the edges so that it would make practically a right angle?

A. So it would hit this piece inside there and it would slide in.

Q. That would push the catch back?

A. Push the catch back and open it.

Mr. Davis: I would ask that this be introduced in evidence, your Honor.

The Clerk: Defendant's Exhibit A admitted into Evidence.

(Testimony of Richard B. Held.)

Mr. Miller: I have no objection; I don't see what value it is.

(Whereupon card referred to above was received in Evidence and marked Defendant's Exhibit A.)

Q. (By Mr. Davis): Now, Mr. Held, did you have a key to this office? [136] A. Yes, I did.

Q. Yes. Were you acquainted with any former—were you working there when there were any employees who had been employed and who were no longer there in November of 1953?

A. Well, just Bill Drumm.

Q. Bill Drumm? A. Bill Drumm.

Q. And he had left about the 1st of October, is that right?

A. I came in August, and it must have been right around the last of October, last of September or the 1st of October, I am not sure of the exact day.

Q. Yes. Now, were you ever there when a janitor by the name of Baker was there?

A. No; that was before my time.

Q. You didn't know him at all?

A. I knew Baker, yes.

Q. Oh, you did. Did you ever examine this desk that was in the office, that is, the desk from which this money was supposed to have been taken, did you examine that to see if it could be opened without the use of a key?

A. On that particular desk I didn't actually ex-

(Testimony of Richard B. Held.)

amine it. I was present at the time when Mike showed how it could be opened.

Q. Who is Mike? [137]

A. I am sorry. Mrs. Keene.

Q. I see. A. We call her Mike all the time.

Q. What method did she use to open it?

A. She reached underneath and pushed this lever or something. I guess it is a lever under there. And the drawer opened up.

Q. I see. That would open the side drawer?

A. Yes.

Q. Wouldn't open the middle?

A. I don't remember we tried the middle drawer or not.

Q. Now, Mr. Held, did you take this money or any part of it? A. No, sir; no, I did not.

Q. Do you know who did? A. I don't.

Q. Did you ever make any arrangement or agreement with anyone else or give them any information concerning this money or go into any conspiracy with anyone else to take it?

A. No, I sure didn't.

Mr. Davis: I think that is all.

### Cross-Examination

By Mr. Miller:

Q. Are you related to Mr. Homer Scott? [138]

A. Yes; he is married to my sister; he is my brother-in-law.

Q. Was he your brother-in-law at the time of

(Testimony of Richard B. Held.)

this occurrence?           A. Yes, he was.

Q. Do you know if this Mr. Bill Drumm was employed in Oakland or vicinity in November of 1953?           A. Employed by IMATA?

Q. Was he in the vicinity or employed anywhere in the vicinity?

A. Well, he stopped in there a few times after that period. As to whether right at that time he was in Oakland or not, I don't know.

Q. Do you recall if he was there at any time on Friday of November 27?

A. No; I don't know.

Mr. Miller: No further questions.

Mr. Davis: That is all.

Call Mr. Scott.

The Court: I think perhaps we better take a brief recess.

(Short recess.)

Mr. Davis: May it please the Court, I would like permission to recall Inspector Mallon for a couple of questions.

The Court: Very well. [139]



ALVIN J. MALLON

recalled as a witness on behalf of the Plaintiff and, having been previously duly sworn, testified further as follows:

Further Cross-Examination

By Mr. Davis:

Q. Inspector, in your capacity with the City of Oakland during the year 1954, isn't it a fact that prior to the time of the disappearance of this particular money there had been a number of losses in the vicinity of this office and this airport?

A. None that I ever investigated.

Q. None that you investigated? A. No.

Q. You hadn't heard of it?

A. No. I heard of it; I didn't know of my own knowledge. I hadn't investigated any.

Q. Did you have any report of any in your office that you know of? A. Not that I recall.

Q. I think you testified that this gas station was across the street from this office. Isn't it a fact that it is across the street from the Terminal building, the main building?

A. I don't believe I testified it was across the street.

Q. What?

A. I don't believe I testified it was directly across the [140] street. It was across the street.

Q. Do you know where it is located?

A. I know where it is, yes, sir.

Q. How far is it from this office?

A. I would say about 75 feet.

(Testimony of Alvin J. Mallon.)

Q. Is it across the street, exactly across the street from the Terminal Building, isn't it?

A. Well, I'd say closer to the Terminal than it is to this office, but not directly across from the Terminal.

Q. And the Terminal Building, I believe you said, was 150 feet?

A. Inspector Gustavson said 100 feet, I believe.

Q. How much?

A. I think Inspector Gustavson said 100 or 150 feet.

Q. Immediately across the street from this particular building, this office building, is a vacant lot?

A. A parking lot.

Q. A parking lot. And then next to that there is a roadway running at right angles to the street that passes in front of this office?

A. About 200 yards, about 100 yards back of that, the roadway——

Q. Wait a minute. I am talking now about the roadway that runs at right angles to the street that passes in front of this office building and in front of the Terminal Building; [141] isn't there another—you got a parking lot across the street, and then isn't adjoining that a roadway that runs at right angles to the street that passes in front of the Terminal Building?      A. I don't believe so.

Q. What?

A. There is a street that runs parallel.

Q. Parallel, but that is a couple hundred yards back.      A. Yes.

(Testimony of Alvin J. Mallon.)

Q. Isn't there another roadway between this office and the parking lot—and the Terminal Building?

A. I don't recall any roadway.

Q. That leads into the—I don't mean——

A. There is a road into the parking lot, but I don't know of any roadway or street.

Q. It adjoins the parking lot, doesn't it?

A. I wouldn't say.

Q. A road adjoining the parking lot?

A. Between the service station, as far as I can recall, between the service station and the IMATA headquarters——

Q. Yes.

A. Well, that is a parking area, entrance to go into the parking area.

Q. Yes.

A. Not what I would call a street; no street goes through, [142] no street with a name.

Q. A driveway or a roadway?

A. Might be a driveway.

Q. Now, did you make any investigation as to the weather conditions on the night of November 27?

A. Yes, I did.

Q. And what were the weather reports?

A. From 9:00 o'clock at night until, I think it was early the following morning, there was anywhere from zero to one mile.

Q. From zero to one mile on account of fog?

A. Yes.

Q. In other words, at times it was entirely blacked out, is that right?

(Testimony of Alvin J. Mallon.)

A. At times, yes; it changed frequently. It was blacked out, they call zero, and then it would clear again.

Q. In other words, there would be no ceiling, you might say?      A. Yes.

Q. That would be zero?

A. That was the way it was explained to me.

Q. Yes. And at other times it would be as much as how much ceiling?      A. A mile.

Q. A mile. That was changing from time to [143] time?

A. Yes; be a quarter of a mile, half a mile, something like that.

Q. Yes.

Mr. Davis: I think that is all.

Mr. Miller: Just one question.

### Redirect Examination

By Mr. Miller:

Q. While you were there, Mr. Mallon, on this back door, when you were examining the back door, were there any signs or evidence that anyone had forcibly or by use of a knife or other sharp instrument slipped the bolt?

A. I didn't notice anything.

Q. You didn't see any such?      A. No.

Mr. Miller: That is all.

The Court: That is all.

Mr. Davis: Call Inspector Gustavson.

ERIC GUSTAVSON

was recalled as a witness on behalf of the Plaintiff, and having been previously duly sworn, testified further as follows:

Recross-Examination

By Mr. Davis:

Q. Mr. Gustavson, did you have any [144] information in your official capacity there about other burglaries or robberies or thefts in the vicinity of this office prior to the time of this occurrence?

A. Yes.

Q. You did? A. Yes.

Q. And was that rather frequent?

A. I wouldn't say it was rather frequent prior to this. I would say that we had maybe three or four what we call petty thefts at the Oakland Airport. That is, lockers had been broken into; some of the desks in some of the offices had opened. And I can't recall anything about what we would call grand theft, in other words, anything over \$200.

Q. I see. Were there any reports of property or monies missing from desks that had been opened?

A. I believe there were. I am only guessing now, one or two reports that had come in where the desks had been—with some instrument—pried open, that is, drawers of the desks had been pried open.

Q. After this occurrence, were there any reports of similar occurrences in that vicinity?

A. None that I have investigated personally. But I would say there have been one or two, yes.



(Testimony of Eric Gustavson.)

Q. During the past fifteen months, you might say? [145]

A. Yes. Yes.

Q. Now, this gas station that we spoke—I think it was spoken here as though it were across the street from this office. As a matter of fact, that is located opposite the Terminal Building rather than across the street from this office, isn't it?

A. I wouldn't say that it was, as you put it, directly across the street from the Terminal Building. I wouldn't say it was directly across the street from IMATA. From my recollection, the gas station covers quite a large area there. The gas station, as I would describe it, itself, that is, the building that contains the grease racks and the office, whatever you want to call it, and the pumps where the gasoline pumps are, from my recollection I would say were closer to IMATA than it would be to the administration building.

Q. Well, across the street from the IMATA office is a vacant—is a parking lot?

A. If you are going to draw a straight line from IMATA directly across the street, that is still part of the gas station. However, it is maintained for parking facilities because it is run by the gas station, as I recall it.

Q. What I am trying to get at is where the attendant at the gas station would be, how many feet would he be from this office of IMATA? [146]

A. You mean from where the gas pumps or where the office is to IMATA?



(Testimony of Eric Gustavson.)

Q. Where the man on duty all night would be likely to be located most of the time.

The Court: That would probably be all over the place.

The Witness: I don't know where he would most likely be.

The Court: Describe it by where the facilities are.

The Witness: If you mean what the distance is from the gas pumps to IMATA's office?

Q. (By Mr. Davis): Yes.

A. I am only guessing, but I would say maybe 75, 100 feet.

Q. 75 or 100 feet, and across the street?

A. Yes, across the street, it is across the roadway, yes.

Q. Now, do you know of your own knowledge whether that gas station was open all night?

A. From my own personal knowledge?

Q. Yes.

A. Only by the sign that is advertising it, that it is open 24 hours a day.

Mr. Davis: That is all.

### Redirect Examination

By Mr. Miller:

Q. Inspector, during your investigation did you talk to the man who was on duty at the gas station [147] the night of November 27?

A. Yes, there were two men that were on duty.

Q. And you talked to both of them?

(Testimony of Eric Gustavson.)

A. Yes, we did.

Mr. Miller: That is all.

Mr. Davis: That is all.

(Witness excused.)

Mr. Davis: Now, I will call Mr. Scott.

### HOMER W. SCOTT

was called as a witness in behalf of the Defendant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: Please state your full name.

The Witness: Homer W. Scott.

### Direct Examination

By Mr. Davis:

Q. And where do you reside, Mr. Scott?

A. 1599 Houston Road, Lafayette, California.

Q. Where do you work at the present time?

A. I'm with the Wells organizations, which is located at 333 Montgomery Street in San Francisco.

Q. And what is the nature of the business that the Wells Organization is engaged in?

A. We are professional fund raisers for churches.

Q. In the business of raising funds for [148] churches?

A. That's right, exclusively for churches.

Q. For what?

A. I say exclusively for churches.

Q. Any particular denomination?

(Testimony of Homer W. Scott.)

A. Any one.

Q. Any one?           A. Any one.

Q. I see. Now, are you married?           A. Yes.

Q. And have you been married for the past three or four years or more?           A. Yes, I have, sir.

Q. Have you children?           A. I have three.

Q. You were employed by IMATA, as they have been calling it here?           A. Yes.

Q. And for what period of time?

A. I was with IMATA for approximately two years.

Q. Beginning what day?

A. Be December of '51 through December of '53.

Q. And when did you leave the employ of IMATA, do you remember the exact date?

A. As I remember the exact date, it was December 12.

Q. December 12? [149]

A. December 12 of 1953.

Q. Yes. What was your position with IMATA?

A. I was western regional manager.

Q. And how long had you held that position? Was that the same position you held at all times?

A. That was my title for the complete duration of my employment. However, the territory was increased to include San Diego. As to the exact date of that, I really don't know; but it was when we anticipated going into what we called the common carriage business, and San Diego was included in the Oakland territory.

(Testimony of Homer W. Scott.)

Q. When you speak of the common carriage business, you are distinguishing that from what other business?

A. What we call the official travel, which was paid for by Government transportation requests, and the common carriage was individual ticket sales to service men.

Q. When you were doing this official business at the Government's request, that was when the Government, itself, would charter a large plane or charter a plane to carry enlisted men to various points? A. Yes.

Q. And the Government would pay for that?

A. That's right.

Q. That would be paid by check; no money would come into your office? [150]

A. No money coming into our office. It wasn't a check, it was called a Government transportation request which the airline used to bill the Government for that particular trip.

Q. Now, on the night or on the day of November 25, which was the day before Thanksgiving of 1953, do you recall having a telephone conversation with someone in Washington, D. C., the office, as to what should be done with a certain large amount of cash that had come into your office? A. Yes.

Q. And what was that conversation?

A. That was a conversation with Mr. Roach in Washington, getting advice from him as to what to do with a large sum of money.

Q. At that time were the banks closed?

(Testimony of Homer W. Scott.)

A. Yes, it was after banking hours.

Q. It was after banking hours. Had the money come in after banking hours?

A. Really truthfully I can't answer that question at the moment. I am not clear. Wednesday, that was the night—that was the day of the move, so the money in all probability, yes, came in after banking hours from Mr. Farquhar.

Q. I see. That was the date of the move. What do you mean by that?

A. That was the date that all of these Marines—or I [151] guess they were Marines—were moving as a result of the sale of these tickets, that was the evening they were all going out from the Oakland Airport by plane.

Q. That was the date they picked their tickets up, is that it?      A. Yes.

Q. And paid the balances that were owing on them.

The Court: Mr. Davis, these matters are not in dispute, this part, are they? I mean, the witness isn't saying anything different than the other witnesses said in regard to these general matters. I don't think there is any need of going over them again.

Mr. Davis: Well, possibly——

The Court: Doesn't really bear on the matter that we have here.

Mr. Davis: Yes.

Q. (By Mr. Davis): Now, it has been testified that Mr. Roach advised you to take this money to the

(Testimony of Homer W. Scott.)

Western Union office, or to have it taken to the Western Union office and buy Western Union telegraphic orders?      A. Yes.

Q. And why was that not done?

A. I instructed Mrs. Keene to do just that and proceeded with her to the telegraph office. However, after her discussion of the cost involved, she approached me again and [152] suggested that possibly this cost could be saved by putting it into the Transocean Airline's restaurant safe. I respect Mrs. Keene's judgment and agreed possibly that would be the thing to do.

Q. And that was put in the safe that night?

A. Yes.

Q. And then, as I understand the testimony, it was taken out again sometime Friday?

A. Yes, that's right.

Q. Yes. And at that time, up to that time that it was put in the safe the first time, had you counted it?

A. I don't—I really don't know, frankly, Mr. Davis.

Q. You don't know?

A. Before it was put into the safe?

Q. Yes.

A. I don't think I did. I don't think I did.

Q. But on Friday, on about what time was it brought back to the office? Let me be——

A. As to the time element, I really couldn't pin it down very closely.



(Testimony of Homer W. Scott.)

Q. On Friday had you counted it or attempted to count?

A. Yes, I attempted to count it with Mr. Farquhar.

Q. With Mr. Farquhar? A. That's right.

Q. About what time did you start counting [153] it? A. That was late in the afternoon.

Q. I see. You worked with Mr. Farquhar until what time?

A. It must have been around 8:00 o'clock, I would say, in the evening, before we——

Q. I see. And then you and—then you put it in the desk, is that correct?

A. Put it in the desk, yes.

Q. In this tin box?

A. It was in the tin box—and put it in the desk.

Q. You had the key to that tin box?

A. Mr. Farquhar had the keys to the box.

Q. And did you have a key to the box?

A. No, sir, I didn't.

Q. And were there any keys to that box around the office that you know of?

A. It was determined after the robbery that there were keys in the desk in the outer office.

Q. Who had keys to that desk?

A. I don't believe that that desk was ever locked, to my knowledge. It was a desk used by various employees, and as to the whereabouts of keys, I don't know, maybe in the desk drawers, may not have been.

(Testimony of Homer W. Scott.)

Q. You say there were keys that would fit that tin box in that desk in the outer office?

A. I believe that was determined after the robbery, yes. [154]

Q. Now, as to the keys to your own desk there, who had those?

A. There was only one, to my knowledge, and I had that.

Q. Yes. And did you keep that in your pocket or in your desk? A. The key to the desk?

Q. Yes. A. Yes, I kept it in my pocket.

Q. In your pocket. Now, when you left the office on the night of November 27, as far as you know, was the box locked? A. Yes.

Q. The tin box? A. Yes.

Q. Was your desk locked?

A. Yes, as far as I know.

Q. Was the rear door and front door locked?

A. As far as I know, yes.

Q. As far as you know. Now, explain and tell me about the lock on the front door, how it operated.

A. The front door lock—I am not too good at explaining locks—however, to lock it, it had to be locked from the inside. There was a knob, a little knob in the center of the knob which had to be pushed in to its proper location to properly lock the door. And you could close the door [155] and it would automatically lock from the outside.

Q. Yes. Were there any times, to your knowledge, when that operation would be performed by pushing this button or small knob that was inside,

(Testimony of Homer W. Scott.)

the inside knob of the door and then in closing the door where something slipped and the door would become unlocked?

A. Not to my personal knowledge. I have heard that the door—if I understand you correctly—the question correctly—I have understood that the door has been found open in the mornings and unlocked.

Mr. Miller: I will object to that and ask the answer be stricken, your Honor. I think it is a conclusion and calls for——

The Court: Hearsay, I think. It may go out.

Q. (By Mr. Davis): Were you present on Saturday, November 28, when Mrs. Keene showed how to open that desk, how it could be opened without a key?

A. Yes, I was there.

Q. Did you see her open it without a key?

A. Yes.

Q. Did you ever see anyone opening the outside door when it was locked, without a key?

A. No, I haven't; I haven't personally, no.

Q. No. How about the rear door, had you ever seen anyone try to open that without a key? [156]

A. No, I haven't personally, no, sir.

Q. I see. A. No, sir.

Q. Now, Mr. Scott, did you take this money or any portion of it?

A. No, sir, I did not.

Q. Do you know who did?

A. I certainly do not, sir.

Q. Did you enter into any agreement or give any information to anyone else or enter into any conspiracy of any kind with anyone to take this money?

(Testimony of Homer W. Scott.)

A. No, sir, I certainly did not.

Q. Now, so far as the business that you were connected with in the selling of these tickets, if I understand correctly, the great portion of these people had purchased these tickets, left the airport on the day of the 25th of November, 1953, is that not correct, on Wednesday? A. That's right; that's right.

Q. Now, how many people were there in the way of maintenance men or others around the airport there that would be cognizant of the fact that such a large number of enlisted men or Marines were leaving on that day, be a substantial amount?

A. It could be a very substantial amount. To pin down to the exact number would be almost impossible. [157]

Q. But there was a substantial number of service men around that airport, those men would have to pay for those tickets that day in order to leave?

A. Yes, I would say.

Q. That was pay day as far as the Marine Corps was concerned? A. I would say so, yes.

Q. They could not get their money until that day in order to pay the balance owing on the tickets, is that correct? A. Yes, that is right.

Q. Prior to the time of this occurrence did you discharge any employee who had worked for the company on account of dishonesty?

A. I wouldn't say exactly dishonesty, but I did discharge a Mr. Paul Baker who at that time was employed as a janitor.

Q. Did he have a key?

(Testimony of Homer W. Scott.)

A. Yes, he had a key.

Q. He was a colored gentleman?

A. Yes, that's correct.

Q. And for what reason was he discharged?

A. Generally inefficient. He also did some of our baggage loading for us.

The Court: Did what?

The Witness: Baggage loading, loading the baggage on airplanes, and some of his characteristics were not what [158] I thought IMATA would like to have around. Between Mrs. Keene and myself, we agreed we should discharge him, or release him from the job.

Mr. Miller: I ask that the last part of that answer as to characteristics be stricken out, your Honor, as too vague.

The Court: I think it is harmless. He had some reason and he fired him. When was that?

Mr. Davis: I was going to ask that question.

Q. (By Mr. Davis): About what date was that?

A. Frankly, I can't be too accurate about that, but it was, I would say, in July sometime.

The Court: Six months before, six months before this?

The Witness: I would say so.

The Court: Before this occurrence.

The Witness: Yes. The IMATA records would show that from our pay records, I am pretty sure.

Q. (By Mr. Davis): Do you know whether he was still working in the vicinity of the airport after

(Testimony of Homer W. Scott.)

you discharged him?           A. Yes, he was.

Q. As I understand these janitors were employed just an hour or two by your organization, and then they worked for various others?

A. Yes, that is right. [159]

Q. So that the fact that you discharged him didn't mean he didn't have other work in the vicinity?           A. No, he was still around the airport.

Mr. Davis: I think that is all.

#### Cross-Examination

By Mr. Miller:

Q. How long, up to the time that you left IMATA, had you worked with Mrs. Keene?

A. You mean up until the time I left IMATA?

Q. Yes.

A. I worked with Mrs. Keene, I would say, for five years in the Bay Area.

Q. In other words, you worked the same place or worked with her for another employer before you went to IMATA, is that right?

A. Yes, that's right.

Q. Now, you have been in court and you heard Mr. Farquhar's testimony here today as to what took place on Wednesday night when the money was counted and put in the desk and locked up. Would you say that the testimony he gave was substantially what happened that night?

Mr. Davis: Pardon me, that is Friday?

Mr. Miller: No, Wednesday—Friday night, yes.



(Testimony of Homer W. Scott.)

The Witness: Yes, I would say.

Q. (By Mr. Miller): Those things substantially as [160] Mr. Farquhar described them?

A. Yes, I would say so; I would say so.

Q. So we don't need to go back over that in detail? A. Not necessarily.

Q. I understand that you left the office about 8:30 on Friday night, is that right, or sometime; maybe it was 8:00 o'clock, about 8:00 o'clock?

A. This was Friday night?

Q. Yes, Friday night.

A. Yes, I would say so.

Q. That is the night the money was left in the desk? A. Yes.

Q. And you went to the bar? A. Yes.

Q. With Mr. Farquhar? A. Yes.

Q. How many drinks did you have in the bar?

A. I really don't recall. I don't think I had more than two. I had a steak sandwich while I was there.

Q. Who left the bar first? You or Mr. Farquhar?

A. I believe I did.

Q. Where did you go when you left that bar that night? A. I went back to the office.

Q. You went back to the office?

A. Yes, sir. [161]

Q. And how long did you stay in the office?

A. I really don't know, sir. I really know I went back primarily to call Mrs. Scott to tell her I was on my way, on my way home, and I believe it has been established by the police that I made a call to Washington, D. C.

(Testimony of Homer W. Scott.)

Q. Yes, and who did you talk to in Washington, D. C.?

A. I don't know the person's name, but it was our operations' office.

Q. That was after you had left the office, gone to the bar, had something to drink and a steak sandwich?

A. Yes.

Q. Then you came back to the office and you called your wife and you called one of the operations, the operations manager for the company in Washington, D. C.?

A. Yes.

Q. And you can't fix the time of that call, approximately?

A. No, I can't, really.

Q. If I were to tell you that the telephone company records show that that call was made at ten minutes after nine, would you agree that that might have been the time?

A. If the telephone records are correct, I would have to agree that is the time.

Q. But that doesn't refresh your recollection so that you would remember that time?

A. No, it doesn't. [162]

Q. What time did you get home that night?

A. I got home at 10:00 o'clock, or just a little before 10:00.

Q. How do you fix that time?

A. Because I recollect getting home at the end of the "Our Miss Brooks" program.

Q. How many miles is it from the IMATA office at the airport to your home in Lafayette?

(Testimony of Homer W. Scott.)

A. I would say it is in the neighborhood of twenty miles.

Q. How long does it normally—would it normally take you to drive that distance?

A. About 45 minutes.

Q. And what were the weather conditions that night? Was it foggy?

A. Yes, I believe we had fog. However, I don't recall it hindering my driving, whatsoever.

Q. Didn't hinder your visibility around the airport, either, did it?

A. Not necessarily, as I recall.

Q. It might have hindered planes going in and out, but wouldn't interfere with visibility around the airport, see your way around the ground all right?

A. Yes, I believe so.

Q. When you left the office at somewhere—after you went back and somewhere around 9:00 or 9:10 at night, or [163] later, was both the back door and front door securely locked?

A. When I went back?

Q. When you left the office finally, after you went back?

A. Yes, I believe we determined that both back door and front door were secured.

Q. Were the windows securely latched?

A. That I can't say, really, because I don't know.

Q. Was there anyone with you at the office that night after you went back?

A. No, sir.

Q. You were all alone?

A. Right.

Q. Are you sure you didn't open the desk and

(Testimony of Homer W. Scott.)

take the cash box out?           A. I am very sure, sir.

Q. You did not?           A. I did not.

Q. How do you account for the fact that there were keys in the office to that cash box without your knowledge?

A. Those cash boxes and the handling of the keys were Mr. Farquhar's responsibility. He had been given the title as District Sales Manager and was given the responsibility to handle the common carriage job. The cash boxes were purchased by Mr. Farquhar; the securing of the keys and the taking care of those were his responsibility. [164]

Q. Now, going back to the time when Mr. Farquhar and you were in the office on Friday night before you went to the bar, did you have any drinks in the office that night?

A. I believe, yes, we had a drink at the office that night—that afternoon.

Q. About what time?

A. I really don't recall.

Q. Did you have more than one?

A. I don't think so.

Q. Where did you get the drink?

A. It was—a bottle was given to me by the operator of the gas station across the street.

Q. And you had that bottle in the office?

A. Yes.

Q. Where did you keep it?

A. In the file cabinet.

Q. And you recall at least taking one drink that night, but no more?

(Testimony of Homer W. Scott.)

A. You mean in the office?

Q. At the office.

A. At the office? I can't recall whether I had a drink at all that night, Mr. Miller, frankly.

Q. You recall pouring out drinks for yourself, Mrs. Keene and Mr. Farquhar? [165]

A. I do recall pouring out drinks, but I can't recall whether that day or night.

Q. You can't remember it was that day?

A. No.

Q. Now, referring back to Wednesday, the day before Thanksgiving, I just want to be sure of this. I understand that you talked by telephone to Mr. Roach and he told you how to handle the cash, to take it to the Western Union Telegraph Company and buy a money order, isn't that right?

A. Yes, that was one of the things.

Q. One of the instructions he gave you. You have already testified that you determined, you and Mrs. Keene, determined that the cost was too great for that. Can you remember what that cost was?

A. As I recall, it was in the neighborhood of \$40 to \$45, in that area, in that neighborhood.

Q. Cost of \$45. You then arranged with Mr. Herman, I think it is, to put the money in the Transocean safe?

A. I didn't, Mrs. Keene did.

Q. Mrs. Keene?

A. Mrs. Keene arranged for that.

Q. Can you tell us why you didn't put the money in the Transocean safe on Friday night?



(Testimony of Homer W. Scott.)

A. Mr. Herman was in the office that afternoon; I think he was leaving early, and the safe that we would want to [166] use, the one that he and one other person had the combination to, wouldn't be available to us.

Q. Isn't it a fact that he came in the office and told you that if you wanted to put the money in the safe, he was going to be back at 8:45 or 9:00 that night?

A. I don't recall that, Mr. Miller.

Q. You don't recall that?

A. No, sir, I don't.

Q. Now, you have testified that on Wednesday there were a large number of Marines moving out of there, a large number of people around and a number of people could have known that you had collected a large amount of money from these Marines. That is on Wednesday, the 25th. How many of those people you think would have known that you still had that large amount of money in the desk on the night of November 27, two days later?

A. I really can't answer that question, Mr. Miller. I don't know how many of them realized it.

Q. It wouldn't have been the same number that—who knew you had the money?

The Court: Well, I don't think—I know Counsel brought it out, but there is no use arguing with this witness. He doesn't know any more about that than you or I.

Mr. Miller: He testified to a large number of people who could have known on the 25th. [167]



(Testimony of Homer W. Scott.)

The Court: I wouldn't pay much attention to that testimony. What has that got to do with the case, how many people would know about it. It wouldn't help us in any way. A lot of people know there is a lot of money in the banks, but that wouldn't explain why some money is missing from the bank.

Q. (By Mr. Miller): How much money was put in the safe on Wednesday, do you know?

A. No, I don't.

The Court: There is no dispute about these matters. Nobody is arguing against the fact that there was about \$15,000 in this sack and that \$15,000 were counted out and went into the box. What happened beforehand as to the amount is really not of any consequence.

Mr. Miller: Your Honor, what I was getting at, I was wondering why the money hadn't been deposited in the bank sometime Friday.

The Court: That you may go into; that has been already testified to to some extent by the lady.

Mr. Miller: He was the man in charge.

Q. (By Mr. Miller): Could you tell me, Mr. Scott, why wasn't this money deposited in the bank on Friday during banking hours?

A. Primarily because we didn't get through with our—what we call our cash reports. Mrs. Keene was doing her [168] very level best to get them completed, and at the time the time element wasn't possible to deposit it.

Q. Couldn't you have counted out some fixed

(Testimony of Homer W. Scott.)

amount, or a large part of it and deposited that in the bank and still continue to make up the cash report?

A. That is right, we could have. However, it is usual procedure to keep cash on hand and make up your ticket reports to correspond with it.

Q. You counted this money on Friday night and to the best of your recollection about how much was there in currency? A. About \$15,000.

The Court: You have already covered this.

Mr. Miller: Not with this witness.

The Court: Yes, you asked him whether Mr. Farquhar's statement of it was substantially correct.

Mr. Miller: No further questions.

The Court: There is a matter I would like to inquire into, not quite clear to me.

You had a conversation with the New York office on this Friday evening when you went back. What was the nature of that conversation?

The Witness: Frankly, Judge, I don't recall, must have pertained to some inbound air carrier, or something about a move. [169]

The Court: You don't recall what that conversation was?

The Witness: No, sir, frankly I don't. However, I could——

The Court: The other matter I wanted to ask you about was this box that you had in which you put the money to which Mr. Farquhar had a key. Referring to that, you have stated you had addi-

(Testimony of Homer W. Scott.)

tional keys to this that were in the desk in the outer office that was open.

The Witness: Yes, as I recall after the robbery it was determined that there were other keys, too. I can't say definitely whether it was to that cash box, but there were other similar keys in the drawer.

The Court: Now, did you know beforehand that there were other keys which might have been, including the keys to this box, that were in the desk in the front office?

The Witness: No, sir. I can truthfully say I did not know.

The Court: You did not know about those keys at all?

The Witness: No, sir.

The Court: You know who put them there?

The Witness: No, sir, I don't know.

The Court: You really did not know whether included in those keys, then, were any additional keys to this strong box? [170]

The Witness: No, I can't say for sure, that's right.

The Court: As far as you know, then, at the time of these events the only person who had a key to it was Mr. Farquhar?

The Witness: That is correct, sir.

The Court: And the only person who had a key to the desk in which the box was contained was yourself?

The Witness: Myself, yes.

The Court: All right.

Mr. Miller: No further questions.

(Testimony of Homer W. Scott.)

### Redirect Examination

By Mr. Davis:

Q. Mr. Scott, you were asked about the visibility on your drive home from the office to your home in Lafayette. As I understood you, you left the office some time—approximately 9:10 p.m.?

A. That apparently has been established by a phone call to——

Q. I mean shortly after, anyway. A. Yes.

Q. You arrived home a few minutes, you believe, before 10:00 p.m.?

A. Right at the end of the “Our Miss Brooks” program.

Q. You do not know anything about the visibility at the airport after then, say, 10:00 o’clock that night, until [171] morning?

A. No, not particularly.

Q. You spoke here about the gas station operator across the street. Tell us exactly, as you know it, where that gas station is located with reference to this office that you were occupying.

A. The gas station office, I would say, was directly across the street from the Terminal Building. The complete gas station would cover an area adjacent to the driveway into the entrance of the hangar in which the IMATA office is located. I would say that the distance from the gas station pump to the IMATA office would be 150 feet as a minimum.

(Testimony of Homer W. Scott.)

Q. Immediately across the street or road from the office that you were occupying is what?

A. It is a parking lot.

Q. Yes. And then adjoining that parking lot is what, in the direction towards the terminal?

A. Towards the terminal?

Q. Yes.

A. There is a—I don't think you can call it a road, or a drive, but there is a road through there, if you want to call it as such—goes out in back of the fence and back of the station, goes on out towards the airport road.

Q. Yes, and then adjoining that is the property that is [172] owned by the gas station, is that it?

A. Yes, yes.

Q. And is a portion of that property used for a parking area for the gas station?

A. That is the property—that is, it is leased or owned by the gas station.

Q. Yes.

A. I think, but has a parking lot for the airport, yes.

Q. I see. And then the pumps where the men in charge of the gas station would ordinarily be located is, as you recall it, almost directly across the street or road from the Terminal Building?

A. Yes, it would be. I would say the——

The Court: Counsel, we have gone into so much of this. Now, it isn't whether it is 50 or 150 or 175 feet, or whether it is diagonally across, it isn't of any great consequence.

(Testimony of Homer W. Scott.)

Mr. Davis: Well, they made so much out of it that this gas station operator hadn't noticed anybody around.

The Court: Maybe he didn't, so what? I don't think that is of any importance, either.

Mr. Davis: All right. I think that is all, Mr. Scott.

Mr. Miller: That is all, Mr. Scott.

(Witness excused.)

The Court: I wonder if you would recall Mrs. Keene [173] to make some inquiry about these keys that were in the desk. That has not been thoroughly covered.

#### EVELYN KEENE

a witness called in behalf of the Plaintiff, recalled by the Court and having been previously duly sworn, resumed the stand and testified further as follows:

The Court: Would you prefer I ask the question?

Mr. Miller: Yes, your Honor.

Mr. Davis: Go ahead.

The Court: Neither of you need to take the laboring oar in that regard.

Mr. Davis: You have in mind exactly what you want.

#### Examination by the Court

Q. Mrs. Keene, with reference to these keys that were in the desk that was open, did you put the keys



(Testimony of Evelyn Keene.)

there? A. No, sir, I didn't handle the keys.

Q. Do you know how they got into that desk?

A. No. I do know after the investigation it was found that there were spare keys in the extra desk.

Q. To your knowledge, then, that arose after this investigation or in the course of the investigation, afterwards? A. Yes. [174]

Q. Did you see this bunch of keys, yourself, do you remember?

A. I don't recall whether I had or not.

Q. You can't inform us as to precisely what these keys were for that were in this desk?

A. No, sir. But I do remember some conversation about them.

Q. You heard somebody else talking about. Now, don't tell me what they said, but who did you hear?

A. Mr. Farquhar.

Q. That is the extent of your knowledge about these keys? A. That's right.

The Court: I wonder if we might have Mr. Farquhar back on the stand.

(Witness excused.)

The Court: I hope you gentlemen don't mind my pursuing this a little bit.

Mr. Davis: Your Honor, this sort of becomes quite familiar to us. We have been over it so many times. It is better for you to pursue it. Things may seem very clear to us. [175]

## ROBERT LEE FARQUHAR

a witness called in behalf of the Plaintiff, recalled by the Court and having been previously duly sworn, resumed the stand and testified further as follows:

## Examination by the Court

Q. Now, did you, Mr. Farquhar, ever see a bunch of keys that were supposed to have been in this desk? A. Yes, sir.

Q. Before these incidents occurred?

A. Well, yes, sir. I can't recall exactly when, but I do remember purchasing the cash boxes.

Q. Doing what?

A. I bought—I was the one, as I say, that purchased the cash boxes.

Q. We hadn't heard that before. Did you buy the same particular cash box that was involved here?

A. Yes, sir.

Q. And where did you buy that?

A. At Associated Stationers in Oakland.

Q. Have you any idea about when you bought it?

A. No, I can't remember. I think—some two or three weeks, couldn't have been more than that. I had only been with them only about a month.

Q. What was the name of the concern? [176]

A. Associated Stationers.

Q. Where are they located?

A. I am not sure; it is downtown Oakland, I think about 17th.

Q. When you got the box, how many keys did they give you with the box?

(Testimony of Robert Lee Farquhar.)

A. I can't recall that.

Q. More than one?

A. Yes, at least two, yes, sir.

Q. When you brought the box back and was used and there was more than one key, now what became of those keys?

A. Well, now, I can't remember, but I could have—very possibly—put them in this top drawer.

Q. You kept one key for yourself?

A. Yes.

Q. You always had a key, yourself?

A. Yes, as a matter of fact, I have one now. If I remember correctly, the one key did fit several different cash boxes. I bought the cash boxes because of the fact that I thought—

Q. You are getting a little bit ahead of me, now. When you bought the cash box that is the subject matter of this inquiry, at that time did you buy more than one cash box?

A. I can't remember whether I did, but—

Q. Well, did you buy at any time more cash boxes than [177] the one that is the subject of this inquiry?

A. Oh, yes.

Q. At a different time?

A. I don't remember whether it was a different time or the same time.

Q. How many do you remember that you bought?

A. Well, now, I remember the large one, they came in different sizes—

Q. I am just trying to find out—

(Testimony of Robert Lee Farquhar.)

A. I can't remember, sir.

Q. You think it was more than one?

A. I think so, yes, sir.

Q. So therefore you must have gotten more than two keys?      A. Yes, sir.

Q. You got other keys, additional keys for the other box or boxes that you bought?

A. Yes, sir.

Q. And what became of those keys?

A. The individual at Treasure Island, Miss Ferris would have one.

Q. Some of these boxes are used at other places?

A. Yes, yes.

Q. But only used the one box at the airport in Oakland?      A. Yes, sir, uh-huh.

Q. And for that box there was at least two keys, of which [178] you had one. What did you do with the other one, the other key?

A. I can't remember, but I must have put it in the top drawer of that small desk that we are talking about.

Q. Why would you do that? Here is a key to a box that contains valuables; you keep one yourself and put one in a desk that is open to anybody.

A. Well, as I say——

Q. I am not saying there is particularly anything wrong, just trying to find out what was the reason for doing it.

A. As I say, I didn't think of this particular type of cash box as being a security measure; it was a very convenient way to handle cash and to make

(Testimony of Robert Lee Farquhar.)

change. I do know that one key will fit several different boxes.

Q. You are sure of that, now, the different boxes you had could all be opened by the same key?

A. Yes, we tried that after the loss.

Q. Used the key—that one key fitted several boxes? A. Yes, sir.

Q. Do you know whether or not at the time on or about that Friday there was an additional key for one of the boxes in this front desk?

A. No, I didn't remember putting it there, no.

Q. You don't remember putting it there?

A. No, I don't remember putting it there, [179] sir.

Q. Well, Mrs. Keene says that she heard you talking about the fact that the keys were in this drawer. Do you recall having talked about the fact that there was—— A. After the loss?

Q. Yes. A. Yes.

Q. After the loss you decided that you put the key, extra key——

A. Right now, no, sir, I can't remember when I put them in, but I can say that it was possible that I did because I purchased the cash boxes.

Q. Did Mr. Scott have a key to the cash box?

A. Not to my knowledge, no.

The Court: Well, I think I have pursued this examination as long as I want. Anything you gentlemen want to ask?

Mr. Davis: I don't have anything.

Mr. Miller: I think not.

(Testimony of Robert Lee Farquhar.)

The Court: How about you, Mr. Davis?

Mr. Davis: That is all.

The Court: Any other witnesses?

Mr. Davis: If I could have one minute.

The Court: Oh, certainly. You wish me to take a recess? I will be glad to take a five-minute recess if you wish to consult. [180]

(Short recess.)

The Court: Any more witnesses?

Mr. Davis: No, the defendant rests.

The Court: Both sides finished?

Mr. Miller: Both sides.

### Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 180 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ R. D. NORTON.

[Endoresd]: Filed July 29, 1955. [180-A]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of Cali-



ifornia, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Complaint with appendix attached.

Notice of motion to dismiss and in the alternative to strike with pts. and authorities attached.

Order denying motion to dismiss or in the alternative to strike.

Answer.

Memorandum and order for judgment.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal filed June 28, 1955.

Supersedeas bond.

Designation of record on appeal by appellant.

One volume of Reporter's transcript of trial.

Plaintiff Exhibit No. 1.

Defendant Exhibit A.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 29th day of July, 1955.

[Seal]

C. W. CALBREATH,  
Clerk;

By /s/ WM. C. ROBB,  
Deputy Clerk.

[Endorsed]: No. 14847. United States Court of Appeals for the Ninth Circuit. General Accident, Fire and Life Assurance Corp., Limited, a Corporation, Appellant, vs. Independent Military Air Transport Association, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed July 29, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 14847

GENERAL ACCIDENT, FIRE AND LIFE AS-  
SURANCE CORPORATION, LIMITED, a  
Corporation,

Appellant,

vs.

INDEPENDENT MILITARY AIR TRANS-  
PORT ASSOCIATION, a Corporation,

Respondent.

STATEMENT OF POINTS ON WHICH AP-  
PELLANT INTENDS TO RELY ON APPEAL

The Appellant will rely upon the following points  
in connection with the appeal in the above case:

That Finding V of the Findings of Fact and Con-  
clusions of Law, namely: "The said loss was alleged  
by plaintiff to be and the evidence adduced reason-  
ably establishes that it was due to the dishonesty of  
one or more of plaintiff's employees, rather than to  
the act of a stranger," is not supported by the evi-  
dence and is contrary to the evidence in this case.

That there is no evidence proving or tending to  
prove that the loss sustained by the Plaintiff and  
Respondent was caused by any dishonest act com-  
mitted by any one or more of the employees of the  
Plaintiff and Respondent.

That there is not sufficient evidence in this case to overcome the presumption that the employees of the Plaintiff and Respondent were innocent of crime. That the Plaintiff and Respondent did not sustain the burden of showing that the loss occurred as a result of one of the risks insured against under the policy.

That there is attached hereto a copy of Designation by Appellant of What to Be Included in Record on Appeal, which designation was filed with the Clerk of the District Court on June 28, 1955.

The designation of a portion of the record which the Appellant desires to have printed is as stated therein.

/s/ THOMAS E. DAVIS,  
Attorney for Appellant.

[Endorsed]: Filed September 1, 1955.